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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In pursuance of a resolution of the Senate, of 20th April,

A Report of the Attorney General,

RELATIVE TO THE

Introduction of Slaves into the United States,

CONTRARY TO EXISTING LAWS.

MAY 6, 1822.

Printed by order of the Senate of the United States.

WASHINGTON:

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1822.

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To the Senate of the United States:

In compliance with a resolution of the Senate, of the 26th of April, requesting the President of the United States "to communicate to the Senate the report of the Attorney General, relative to any persons (citizens of the United States) who have been charged with, or suspected of, introducing any slaves into the United States, contrary to existing laws," I transmit herewith two reports from the Attorney General.

JAMES MONROE.

Washington, 6th May, 1822.

OFFICE OF THE ATTORNEY GENERAL OF THE U. S.

February 2d, 1820.

SIR: The slaves to which Governor Clark alludes, having been imported prior to the act of the 3d March, 1819, do not fall within the sphere of the powers and duties assigned to the President by the first and second sections of this act. These slaves appear to have been introduced in the fall of 1817, or in the following winter, at which time, by the laws of the United States, they were subject to be disposed of by the laws of the several states. If they were not proceeded against under the state laws, I understand that proceedings may now be had against them, under the 4th section of the act of Congress, of 3d March, 1819, which provides "that, when information shall be lodged with the attorney for the district of any state or territory, that any negro, &c. has been imported therein, *contrary to the provisions of the acts* in such case made and provided, it shall be the duty of the attorney forthwith to commence a prosecution by information, and process will issue against the person charged with holding such negro, &c. and, if it shall be ascertained by the verdict of a jury that such negro, &c. has been brought in, contrary to the true intent and meaning of the acts, &c. then the court shall direct the marshal of the said district to take the said negro, &c. into his custody for safe keeping, subject to the orders of the President," &c. I understand this section of the act of 1819, as applying to all negroes theretofore brought in, against the provisions of any of the acts of Congress on the subject, who had not been disposed of previously by the state laws; and, consequently, that if these negroes are in this predicament, and are now in any state or territory of the United States, proceedings may still be had against them under that section; but that the President has nothing to do with them, until they shall, by the judgment of a court, be placed in the hands of the marshal, subject to the orders of the President; and that, when so placed in the marshal's hands, the President may order them, if he pleases, to the coast of Africa, under the spirit of the act in which this 4th section is found.

I think, also, that it is due both to the government and General Mitchell, that a prosecution should be instituted against him for the penalty given by the laws of the United States for the importation of slaves. Such a prosecution will give him an opportunity of acquitting himself, if innocent, and will inflict a just punishment on him, if guilty.

With respect to the propriety of submitting this case to Congress, in their call for information as to the practices in evasion or violation of our slave laws, Governor Clark's communication appears to me to come directly within the object of the call, and, being derived from so respectable a source as the Governor of the state of Georgia, I cannot perceive with what propriety it can be withheld.

I have the honor, &c. &c.

WM. WIRT.

The PRESIDENT OF THE U. S.

Office of the Attorney General of the United States,
21st January, 1821.

SIR: I proceeded, on the 1st instant, according to appointment, to take up the case of General David B. Mitchell, the agent of the United States for Indian affairs, at the Creek agency, under a charge from Governor Clark, of Georgia, that he was concerned in the unlawful importation of Africans, in breach of our laws, in the winter of 1817–18; and have now the honor of reporting to you, according to your direction, my opinion, both of the law and the facts of the case.

The only law of the United States which has any bearing on the conduct of General Mitchell, is the act of Congress of the 2d of March, 1807, entitled "An act to prohibit the importation of slaves into any port *or place within the jurisdiction of the United States* from and after the first day of January, 1808." This act, after inflicting severe penalties on any who shall, after that day, import, or aid in importing, any negro, &c. to any port or place within the jurisdiction of the United States, with the view of selling them, or holding them in service or labor, proceeds to declare, among other things, in the 4th section, that "*neither the importer, nor any person or persons claiming from or under him, shall hold any right or title whatever, to any negro, mulatto, or person of color, nor to the service or labor thereof, who may be imported or brought within the United States, or territories thereof*, in violation of this law; but the same shall remain subject to any regulations, not contravening the provisions of this act, which the legislatures of the several states *or territories*, at any time HEREAFTER may make for disposing of any such negro, mulatto, or person of color." This section of the act does not provide what shall be done with the persons thus imported, in case the legislatures of the several states shall not *thereafter* have made any regulation for disposing of them: but the 7th section of the same act, after authorizing the seizures to be made by the armed vessels of the United States of any vessels with slaves on board, that may be found hovering on the coast, and giving a moiety of the forfeiture to those who make the seizure, provides, that, in order to entitle them to such moiety, the officers, &c. shall safe keep every negro, &c. found on board, &c. and shall deliver every such negro, &c. to such person or persons as shall be appointed by the respective states to receive the same, "*and if no such person or persons shall be appointed by the respective states, they shall deliver every such negro, &c. to the overseers of the poor of the port or place where such ship or vessel may be brought or found, and shall immediately transmit to the Governor or chief magistrate of the state, an account of their proceedings, together with the number of such negroes, &c. and a descriptive list of the same, that he may give directions respecting such negroes*," &c. It is true, that this directory provision is confined, in terms, to the *officers and men of the armed vessels of the United States*, making seizures of slave vessels on the coast, yet, as it forms a part of the same act with the section before

in part quoted, and contains the only direction in the act as to what shall be done with negroes, &c. seized, where the state shall not, by its laws, have pointed out a person to receive them, it may be well considered as incorporated with the 4th section, as supplying its defects, and giving the rule of action in the analogous case of a seizure on land, so far as the direction could be carried into effect, under the circumstances of such a case. For example, in the case of a seizure made in the Indian country, where no counties were yet organized, and where there were no overseers of the poor; that part of the direction which orders a delivery of the negroes to the overseers of the poor could not be carried into effect; but that part of it which requires an immediate report to the Governor of the state, could have been carried into effect; and the direction ought *to be respected*, as an expression of the purpose of Congress, where the state had omitted to provide persons for the function in question. Yet this construction of the act is not so obvious or necessary as to attach guilt to any man who, having made a seizure by land, shall have omitted to adopt and act upon it. But the 4th section, taken by itself, and without any reference to the 7th, in divesting the importer of all title to the negroes, and subjecting them to be disposed of *according to the legal regulations of the state*, would seem very naturally to *advertize the seizor* that the Governor of the state, officially charged with the execution of laws of the state, ought to be forthwith apprized of the seizure, and its circumstances, that he might give direction respecting such negroes.

The act of Congress, thus referring the disposal of slaves, illicitly imported, to the regulations which should *thereafter* be made by the legislatures of the several states, leads us to inquire, in the next place, whether the legislature of the state of Georgia, the theatre of the transactions under consideration, had made the regulations contemplated by the act of Congress.

The constitution of the state of Georgia, of the year 1798, forbade the future importation of slaves from Africa, or any foreign place, after the first day of October following. There have been several prohibitory acts of the legislature of that state, both before and since the act of Congress, under very severe penalties; some of them, enacted just before the occurrence under review, made the importation a penitentiary offence. But all these acts stopped at the infliction of the penalty, leaving the importer still in possession of the slaves. I can find no act of the legislature of Georgia, in the volumes furnished from the Department of State, which connected itself with the act of Congress, of 1807, by providing the regulation therein contemplated, for the disposal of the negroes, &c. unlawfully introduced prior to the 19th December, 1817. On that day, an act was passed "for disposing of any such negro, mulatto, or person of color, who has been, or may hereafter be, imported or brought into this state in violation of an act of the United States, entitled 'An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the 1st day of January,

1808." The first section of this act authorizes the Governor of the state "to appoint some fit and proper person to proceed to all such ports and places, within this state, as have, or may have, or may hereafter hold, any such negroes, &c. as may have been, or hereafter may be seized or condemned, under the above recited act of Congress, and who may be subject to the control of this state, and the person so appointed shall have full power and authority to ask, demand, &c. all such negroes, &c. and to convey the same to Milledgeville, and place them under the immediate control of the Executive of this state." The second section of the act authorizes the Governor to make sale of such negroes, &c. in such manner as he may think best calculated for the interest of the state. The third section authorizes the Society of Colonization, &c. to anticipate the sale by a demand for the negroes, &c. to be transported to Africa, or any foreign place, on certain conditions, and requires the Governor to aid in promoting their benevolent views in such manner as he may deem expedient.

This act of the legislature of Georgia has been objected to, in its application to this case, on several grounds:

First. That the negroes, in the case under consideration, had been imported before the passage of the act.

The answer is, that the act expressly embraces previous importations.

Second. This feature of the act is objected to as *ex post facto.*

Answer. If the act inflicted any new penalty on the importer, in a past case, or divested a previously vested right, the objection would be valid; but it inflicts no new penalty, and, indeed, no penalty whatever. It divests no previously vested right, because the act of Congress, of 1807, had already declared that neither the importer, nor any one claiming under him, should hold any right or title whatsoever to negroes thus imported, nor to the service of them.

It is further objected, that the act of Georgia is inconsistent with the *policy* of the act of Congress.

The first answer to the objection is, that Congress, by the act of 1807, left it to the legislatures of the states to make *any* regulations, for disposing of any such negro, &c. not contravening the *provisions* of the act of Congress. Now, the act of Congress makes no *provision* as to the state or condition, whether of freedom or slavery, in which such negro should be left. It stops with divesting the importer and those claiming under him of all title; but the mode of disposing of the negroes, &c. is left, and properly left, to the absolute control of the state into whose bosom they have been illicitly imported; for it must have been considered that the state, immediately affected by the importation, was most capable of judging in what way the mischief could be best counteracted. Nor do I perceive that the act of Georgia can be justly charged with being inconsistent with the *policy*, any more than with the *express provisions*, of the act of Congress. The policy of the latter act was to prohibit the future importation of slaves. The means which it adopts for this purpose are the infliction of heavy penalties on the importer, and stripping

him, and all claiming under him, of all title to the persons thus imported as slaves. If the state law was in conflict with either of these provisions, or instituted others calculated to encourage the importation, it would certainly be inconsistent both with the policy and provisions of the act of Congress. But the question as to the manner in which the negroes are to be disposed of, after they have been actually imported, in violation of the law of Congress, is a question of self-defence, of self preservation, which Congress submits entirely to the discretion of the state affected by it.

In farther reply to the objection, it may be asked, what could the state do, better than it has done? Should it have provided by law for exporting the persons thus introduced, out of the United States and the territories thereof? Whither were they to be exported? There was, then, no place provided to which the state could send them. Should they have been turned loose as freemen in the state? The impolicy of such a course is too palpable to find an advocate in any one who is acquainted with the condition of the slave-holding states. Should they have been re-delivered to the persons who had brought them in, under a bond to carry them out of the United States, and out of the territories thereof? The inefficacy of such a measure has been set in a strong light by the several communications of General Mitchell, which are now before me, and I find myself unable to add a single illustration of the imbecility of such a course, in relation to the object of the act of Congress; I will barely suggest that, so far from aiding that object, it is among the happiest courses which could be devised to frustrate and defeat it.

I do not perceive that the act of Georgia is fairly liable to either of the objections which have been taken to it; nor do I perceive that the state could have adopted a better or a more liberal course, (in relation to the slaves themselves,) than the alternative regulations proposed by this act. If the Colonization Society would undertake to carry them out of the country, to Africa or any foreign place, the negroes were to be delivered to them for that purpose, and the governor was required to aid in the execution of this benevolent purpose; if that society should not apply, it remained for the state to look to its own safety, by placing them in that condition in which they would be the least likely to do mischief; and the state has done so, *according to their judgment*, to which alone they are remitted by act of Congress, of 1807.

Before I leave the laws which bear on this subject it is proper to advert to an act of the legislature of Georgia, which was passed before Congress was authorized by the Constitution to prohibit the importation of slaves; and to which I advert, not because it has, in my opinion, any fair relation to the question, according to the date or the terms of the act, but because it has been assumed as an auxiliary guide in directing the conduct of General Mitchell in this case. I allude to the act of the legislature of Georgia, of the year 1796, entitled "to organize the militia in the several new counties of this state;" by the third section of which it is enacted, "That the officers of the

militia in the first brigade, in the first division, shall be authorized and empowered in their respective patrol districts, to apprehend any negro, mustee, or mulatto, freeman or freemen, slave or slaves, who shall hereafter arrive in any port of this state, from any of the West India or Bahama islands; and to keep such mustees, negroes, or mulattoes, in close and safe custody, until they can be examined before the corporation of Savannah, or any three justices of the peace for any of the counties lying in the said division, who are hereby authorized to cause such freeman or freemen, slave or slaves, to be exported at the expense of the importer or owner, which such importer or owner is hereby made liable for, as well as for the expense of apprehending or keeping such person." I learn from the statements of General Mitchell which are before me, that the officers of the first brigade, in the first division of the militia of Georgia, covered in local residence the whole extent of the sea coast of Georgia; and that this law, as its date and terms sufficiently indicate, was levelled at the brigands whom the convulsions of St. Domingo had rendered objects of terror, not only in that island, but in all the neighboring countries.

That this act had no connection with the act of Congress of 1807, is manifest from the following considerations, which indeed are so palpable that they scarcely require suggestion:

1st. That the act of Congress was certainly regarded by that body as the basis of a new system, to be reared under the federal constitution for the prohibition of the whole slave trade, with which it was anticipated that the states would co-operate. Congress acted as soon as it was at liberty to act on this great subject, leaving much, however, to the future co-operation of the states to forward the grand object which they had in view. Hence, the language of the 4th section of the act of Congress of 1807, subjecting negroes imported in violation of it, to such regulations as should be *thereafter* made by the several states. The state act under consideration, was not *thereafter* made, but had passed more than ten years before the era of the prohibitory system under the constitution of the United States.

2d. The act of Congress of 1807, is an act universal in its operation against the importation of *all persons of color from Africa or elsewhere;* the state regulations, therefore, which it contemplated, were to be the regulations of commensurate extent; whereas the act of Georgia, under consideration, grew out of a particular occasion; is confined in its terms to that occasion; to persons of color imported or coming *from the West Indies and the Bahama islands, exclusively;* and this act expired so completely with the transient events which produced it, that, I understand, it has been considered as obsolete for twenty years.

3d. It is to be farther observed, that the *power to apprehend* under this act of Georgia, is confined to the militia officers who covered the sea-coast; and,

4th. That the power to export is confined to the corporation of Savannah, or any three justices of the peace for the counties lying in the first division.

5th. That the exportation was to be, not out of the United States, or the territories thereof, but an exportation *simply out of the state of Georgia;* which, however, was to be at the expense of the importer or owner, " which such importer or owner was thereby expressly made liable for, as well as for the expense of apprehending and keeping such persons."

I think it perfectly clear that this act has no bearing on the case.

The results of this view of the law, are:

1st. That, by the act of Congress of 1807, the importation of slaves from Africa or elsewhere, into the United States, or any place within their jurisdiction, is prohibited under severe pecuniary penalties.

2d. That, by the same act, the importer, and all claiming under him, are declared to have no manner of title to the negroes imported, nor to their services.

3d. That, by the same act, it is left to the legislatures of the states to regulate the manner in which the negroes thus imported, are to be disposed of.

4th That, by these two last provisions, it become the duty of every good citizen, who should be apprised of a breach of the law, to take prompt and immediate steps for the seizure of the negroes, and the information of the Governor of the state, within which the seizure should be made, that he might give directions for disposing of the negroes.

5th. That the legislature of Georgia had passed no act making the regulations contemplated by the law of Congress of 1807, until the act of the 19th December, 1817, before mentioned: to which act there is not, I conceive, any valid constitutional objection.

I come now to a much more difficult part of the subject—the facts of the case. The vast mass of documents, composed of affidavits, sometimes on notice, sometimes *ex parte*, of letters, hearsay statements, &c. the irreconcilable contradictions among the witnesses, the host of certificates and affidavits, reciprocally assailing and supporting the character of these witnesses, render it next to an impossibility for me to come to an accurate conclusion on *all* the facts of the case. The great advantage of the trial of facts by a jury of a vicinage, arises from their knowledge of the parties and their witnesses, and the opportunity they enjoy of observing the countenances and manners of those witnesses while delivering in their testimony, *viva voce.* I I have none of these advantages. I have no personal knowledge either of the accuser or the accused, or any one of the witnesses, on the one side or on the other; and have nothing to guide me but contradictory statements, or the statements made by the parties themselves. Since, however, it is your wish that I should proceed by the best lights that I have, to express my opinion of the facts, I shall do so, with this consolation under this ungrateful duty, that if I shall, unwittingly, do injustice to the parties, or either of them, by the opinion I may form, the whole case will pass, again, under your own review, and the error can be corrected before it shall have inflicted a wound.

I will premise, however, that copies of the evidence originally sent on to the Departments of State and of War, composed in part of *ex parte* affidavits, letters, certificates, hearsay statements, &c. have been, mutually, furnished to the parties, with information that the evidence is not regular; this was done with the view to enable them to retake it, more formally, if they should think proper to do so, and to give them an opportunity, mutually, to make such strictures as they pleased on the adversary proof. General Mitchell declines taking the proof, over again, on two grounds. 1st, Of the difficulty, if not impractibility of taking it, in better form, because of the dispersion of the witnesses and the impossibility of commanding their attendance, in this extra judicial proceeding, in which no process can issue to coerce them; and, 2d, Because, if Gov. Clark his accuser, wishes it, he can himself take the depositions of those witnesses (General Mitchell's) anew, and thus have all the benefit which he could have derived from an original cross-examination. These considerations appear to me to be just, and I believe it would be in vain to wait in the hope of getting the testimony in better form. Taking the remarks of General Mitchell, therefore, as just, and giving them a reciprocal action, I shall consider the evidence on both sides, as if all objections, in regard to form were waived as to the original affidavits, noting as *ex parte* those only which have been since offered, so far as I can make the discrimination; and noting, also, as I state the documents (through the whole of which we must necessarily travel) any other legal objections which strike me, to any reliance on them as proof.

It is proper to state, before I open these documents to you, that the questions which they seem to me to suggest for your consideration, are these:

I. Has the conduct of General Mitchell, throughout this transaction, been consistent with our laws?

II. If inconsistent, is that inconsistency to be fairly and reasonably imputed to an innocent mistake of the laws, or to a wilful and conscious violation of them?

III. If the latter, what is the extent and character of his offence?

1st. Was he concerned as a partner, in the original purchase and introduction of the Africans, either by the advance of money to aid in the purchase, or by an engagement to be responsible for a proportion of the capital to be advanced, by the other partners; or by an engagement, in lieu of money, to render services, by protecting the Africans at the agency and facilitating their transfer to Alabama, or otherwise, for a proportion of the negroes, or any other part of the profits of the speculation?

2d. If there was no previous and specific arrangement as to time or terms, was there a previous general understanding between him and Bowen, or others, that if the negroes should be brought to the agency, he would, for a reward, protect and give them a passport to the Alabama territory, or place them in a situation to be sold?

3d. If there was no previous general understanding on the subject, did he, from improper motives, when the negroes were actually brought to the agency, connive at, and aid in a breach of our laws, by protecting those negroes, and giving them a passport to Alabama?

I proceed now to the documents, and I shall, first, present those which appear to me to operate in support of the charge, and then those which go to repel it, interweaving in the course of these statements the remarks suggested by the parties, as well as those which occur to me as arising from them; and the objections to the documents themselves as proof.

In March, 1817, General Mitchell resigned the Executive chair of the state of Georgia, and accepted the appointment of Indian agent, at the Creek agency, as the successor of Colonel Hawkins, whereupon, Captain John S. Thomas, (a relation of General Mitchell's by affinity,) and Captain Wm. S. Mitchell, the General's son, (both of whom are witnesses in this transaction,) went immediately to reside at the agency, and undertook to plant a small crop of corn for the agency. See General Mitchell's letter to the Secretary of War, of date 27th July, 1820.

The salary of the office of a Governor of Georgia, at the time that General Mitchell resigned it, was $2,000 per annum; that of Indian agent at the same time was equal to that sum. But the Governor was elected for two years only; the agent was to hold during the pleasure of the President, that is, during good behavior. The salaries being equal, the inferior honor of the agency may be considered as fairly counterbalanced by its superior tenure; and I see nothing in this circumstance, in itself considered, to awaken just suspicion against a character previously fair. I make this remark to exclude any inference from this step to the prejudice of General Mitchell.

July, 1817, Major *John Loving* states a conversation which he had with General Mitchell, to this effect: Loving informed the agent that he, Loving, was desirous of making a purchase of Africans at Amelia Island, or elsewhere, within the Floridas, provided the same could be done safely and legally: upon these points the agent's opinion was requested; and he was further asked, whether he would allow Africans to be introduced through the Indian country. The reply of the agent was, that he had been thinking of such purchase himself, and that Loving might bring any Africans, which he might purchase, through the Indian country with safety, *to the agency, where he,* the agent, *would protect them.* Loving having stated that he expected to make his residence at Fort Hawkins, the agent suggested that the negroes might be removed, if Loving wished it, to the reserve, where he (Mitchell) thought they might be disposed of to advantage. Their conversation then became more minute and detailed, and Loving was advised what route to travel. The witness says he took a memorandum of the route, but, that, having lost or mislaid it, he cannot now trace all the points by which he was to pass; he recollects, however, that he was to start from Amelia Island, and *pass through the Creek country, by Barnard's, to the agency.*

Thomas L. Woodward. This is a statement not on oath; and the circumstances which it states are *hearsay*, merely. The document, however, has been in the hands of General Mitchell, and has been the subject of some remarks by him, which will be noticed hereafter. Woodward states, that, sometime shortly after General Mitchell was appointed agent for Indian Affairs, he (Woodward) was in company with Colonel Joseph Howard, a man of unblemished reputation, who asked the witness if he would go to East Florida, or Amelia Island, to purchase Africans; the witness replied, that he did not wish to engage in a speculation of that sort, as the United States' laws, and laws of Georgia, did not tolerate such trade; and that if he was willing to engage in such speculation, he had not the funds to commence with. Colonel Howard replied, that if the witness would go to that country, for that purpose, General D. B. Mitchell would furnish him with money, and draw a certain part of the profits, and that the negroes, if purchased, could be brought up through the Creek nation, by way of the agency, undiscovered, and then be disposed of to the best advantage; that this conversation occurred before the negroes were brought to the agency by Bowen. The witness adds to this statement, that while he was in Florida with General Jackson, Captain Wm. S. Mitchell (I presume the agent's son before mentioned) stated to him that he had an aunt, in the low country, that died and left him fifty negroes.

Christian Breithaupt. This is an ex parte affidavit, recently received, and which, therefore, General Mitchell has never seen. It is covered under a letter from Mr. Breithaupt to the Secretary of War, dated "Mount Vintage, South Carolina, 27th December, 1820," on which the Secretary endorses: "I know Mr. Breithaupt well, and his statement is entitled to the fullest confidence." This witness states that, in the month of August, 1817, a Mr. John Martin, who had made purchases for the deponent at the land sales held at Milledgeville, came to deponent's house in company with *Jared E. Groce;* that, in the course of the conversation, Groce congratulated the deponent on the great bargains he had got, and observed that he (Groce) knew, however, of a much better speculation, by which a fortune could be realized in a very short time. His words were, "it could be easily done, with your means, and the services of a few such men as Martin." Deponent replied, that he supposed Groce to possess ample funds for the purpose. Groce answered in the negative, and said that *his connection with the Erwins, and his settling in Alabama, together with his recent purchases*, had quite exhausted them, and that he was now upon borrowing, "but you (meaning the deponent) might, I know, procure the money, and *we* could do great business." The deponent then asked Groce what he had in view; that Groce appeared unwilling to disclose it; but, after a while, said to deponent: "Do you know what is carrying on in Amelia Island?" The deponent then answered that he could guess what he now meant by his speculations, to wit, the purchase of African negroes: that Groce smiled. The deponent then further observed that

an adventure of that nature was not only a violation of the laws, but also connected with great personal danger. To the latter, Groce replied, either that he knew of a plan, or that he could suggest one, by which no danger was to be apprehended. The deponent thinks that the first was the expression made use of by Groce; and that the conversation here ended, by the appearance of Mr. Martin, or some other person.

This incident acquires significance and importance by the subsequent part of this case, and the prominent part which the same Jared E. Groce acted in it.

It is now proper, in the order of time, to introduce Capt. William Bowen, the principal actor in this transaction. This gentleman had been for some time employed in the Indian department by Col. Hawkins, the immediate predecessor of General Mitchell, as we learn by General Mitchell's letter of the 25th December, 1817, to the Secretary of the Treasury. John S. Thomas says that he was well acquainted with Bowen. What had been the duration and extent of General Mitchell's previous acquaintance with him, we are not informed by General Mitchell; he does not speak of him, however, as a stranger. Captain Melvin, of the army, says: "How, or in what manner, Mr. Bowen was connected with the Creek agent, General Mitchell, it is not in my power to state. I have heard Mr. Bowen say that he had received, some time in 1817, ten thousand dollars from General Mitchell, for the purpose of purchasing goods for the Creek Indians. *Goods, said to amount to ten thousand dollars, were distributed to the Creek Indians, at Fort Hawkins, sometime in June or July,* 1817, *by the said Bowen.*" Thus far Capt. Melvin; and Gen. Mitchell, in his letter to the Secretary of War, of the 27th of July, 1820, states, incidentally, that he had seen Bowen in the month of July, 1817.

In that same month, (the same month in which Loving represents the conversation to have passed between General Mitchell and himself, and one month before the conversation between Groce and Breithaupt, in South Carolina,) Bowen says that he left Fort Hawkins to visit his friends in South Carolina; thence he passed to Augusta, (the residence of Andrew Erwin, the senior partner in the firm of Groce & Co. which Groce is the same *Jared E. Groce*, just mentioned.) Thence Bowen passed to Savannah, the residence of James Erwin, the son of Andrew, and another member of the firm of Erwin, Groce, & Co. Here he learns, casually, that great speculations were to be made at Amelia Island, in sugar and coffee. Having been furnished with means, chiefly by the credit of James Erwin, to embark in those speculations, he proceeds to that island. Here he finds that the articles of sugar and coffee were higher than he expected, and he determines to return to the main. *By accident*, however, he is left by the vessel in which he had intended to embark, and while he remains waiting for another conveyance, by another *casualty*, (the arrival of a cargo of negroes in one of Com. Aury's privateers) he is induced to change the subject of his speculation, and vests in the purchase of that cargo of negroes the funds which he had carried over to buy sugar

and coffee. The negroes are delivered to him at a place agreed on, being about one hundred in number. He selects about sixty of the most prime and able ones, (having procured a place of lodging for the residue, and sets out for the westward, following a small Indian trail, leading from the direction of St. Augustine to Flint river, which, according to the map, crosses that river at Barnard's. He says that he became alarmed for the security of his property, and had determined to settle in West Florida. With this view he proceeds for fifteen days through the woods and wilderness, and strikes Flint river about sixty miles below the Creek agency, where he becomes alarmed again by the intelligence of the Seminole war; he finds himself, moreover, pressed by the want of provisions, an event, it seems, not to have been anticipated in travelling through a wilderness with sixty Africans. In short, by the joint operation of alarm and famine, he is induced to carry the negroes to the Creek agency, where he arrives about the beginning of December, having travelled, by chance, over the exact route which Loving states General Mitchell to have indicated to him, so far as I can collect from comparative descriptions.

In the fact, that his original destination was West Florida, and that the resolution to carry them to the agency was, for the first time, taken at Flint River, by the alarm and famine which pressed him at that point, Bowen is contradicted by one of the men hired to assist in the removal of the negroes.

This witness states, in his affidavit, that, at the house of Charles Love, in East Florida, or close in the neighborhood of it, he found the negroes in possession of William Bowen and James Long; that he was employed by Long *to assist in carrying the negroes to the agency;* that they, Bowen, Long, and himself, with the negroes, crossed the St. Mary's River at a ford called the pine log ford, and proceeded with the negroes *to the agency*, where they deposited the negroes, at the lower end of Gen. Mitchell's field, and where they built houses for the negroes, and put them to work; a step certainly not deficient in boldness, on the presumption that all this was done without any previous understanding with General Mitchell.

It seems that Gen. Mitchell was not at the agency, at the precise time of the arrival of these negroes, which is fixed by the witnesses at the first week in December. But he admits that he arrived at the agency on the 8th of that month, when he was informed of the arrival of the Africans; that he spent a night at the agency, and saw and conversed with Bowen on the subject. What was the nature of this conversation, throughout, it will be more safe to learn from the acts of the parties than from their declarations. It was, certainly, not of a nature to excite any new alarm in the mind of Bowen, susceptible as he seems to have been of that emotion, nor to deter him from a repetition of the offence. For, having given to Long five of the negroes as a reward for his assistance in carrying the gang to that place, he sets out to Amelia Island for the purpose of bringing on the residue of his purchase *to the agency:* a step which it is not in the nature of things to believe that he would have taken, unless he, at least, understood it to be authorized by Gen. Mitchell.

Bowen's statement in his affidavit is calculated to make the impression that the negroes, when purchased, were not delivered to him at Amelia island, but somewhere on the Main, and that when he carried off the sixty before mentioned, the residue were left on the Main. It seems, however, that they were in fact left on Amelia island, and to Amelia Island he proceeded, taking with him, as assistants, the same John Oliphant already mentioned, and an Indian by the name of *Tobler*. They left Amelia island with the last parcel of negroes, forty-two in number, and carried them up to St. Mary's river in a boat, to Drummond's Landing, in East Florida, where Bowen sold four of the negroes to Captain Drummond.

From this point it is understood that Bowen sent on the negroes by Tobler and Oliphant, not intending himself, to accompany them any farther, but to pass through the interior of Georgia, where he had business, and then to "proceed by way of Milledgeville and Fort Hawkins, to the agency, and meet the whole of the negroes." Before parting, however, with Tobler and his convoy, he addresses the following letter to General Mitchell, which was sent by Tobler.

DRUMMOND'S BLUFF,

25th December, 1817.

I have got the balance of the stock that I had left on Amelia, say forty-two, and am just starting them under the care of Tobler. I believe I am narrowly watched, but think I have evaded discovery as yet. The risk of getting this lot through, I believe to be more considerably more, than the first. A party was made up for the purpose of following me and Long, three days after we left St. Mary's river. Mr. Clark, the collector, was at his mills, and some person lodged information that they were gone up the river and had crossed; he offered half to the inhabitants in that neighborhood, to detect us. Since the people have learnt that they would not have got any part for the detection of those last sent up, I am informed, that they are displeased at the collector, for the imposition that he endeavored to practice on them, in offering what he could not perform.

A detachment of soldiers has, for a month past, been stationed near Camp Pinkney, to guard the river and prevent smuggling.

On the 23d instant the United States took possession of Amelia island. I had left there on the 21st instant; but am informed they seized all the Africans they could find. There was a cargo of one hundred and sixty, when I left the island, which have been run off to the main the night before the United States troops landed.

I cannot cannot say how the other prize property fared.

I go to Milledgeville by *Savannah*, and wish you to keep the negroes employed, until I can come out to the agency.

I have directed Tobler to take charge of the horses and packs, &c. and to put the horses out in the Cane Swamp and attend to them.

The channel through which Africans could be had, being obstructed, they will rise considerably, notwithstanding excellent bargains

could be had in the purchase of those that were run off to the Main from Amelia.

I would make another purchase, but my other business is too much neglected, to take the necessary time to accomplish the security of them.

Captain Thomas could have done well, if he had have come with me. Prime fellows were offered at Amelia $250; ordinary 175 to 200.

I am, respectfully,
Your obedient servant,
WILLIAM BOWEN.

General D. B. Mitchell,
Creek Agency.

Besides this letter, Tobler was furnished with a bill of sale, purporting to have been executed on the 4th of December, 1817, at Camden county, in the state of Georgia, by one William Lane, by which, for the consideration of $12,600, Lane sold to Tobler an Indian of the Creek nation, forty-two negroes, whose names are stated, and purporting to have been attested by Wm. Drummond and John Smyth. Tobler was also instructed to claim the negroes as his own.

Shortly after Tobler and his party had separated from Bowen, they were met by two men, whose affidavits have been taken, and are in substance as follows:

Lodowick Ashley states, that, about the 24th December, 1817, he set out from his residence for the low country, accompanied by Jason Brinson; that on their way, about twelve miles this side of Traders' Hill, (the affidavit being taken in Telfair county,) on St. Mary's river, on what is called Blackshear's road, on the 26th day of the same month, they met a white man, by the name of Oliphant, and a Creek Indian, called Tobler, who had with them upwards of forty negroes, which Tobler said belonged to him; that they proceeded on to the house of William Drummond, in East Florida, where they saw Bowen, and having informed him that the negroes were taking a very hazardous route, as they would probably fall in with General Glasscock's army, upon which Bowen offered to give the witness his choice of the negroes to go and assist in conducting them to Timothy Barnard's, or to the neighborhood of the agency. The witness observed, that he should not like to be caught there, with the negroes, by General Mitchell; to which Bowen replied, that he believed General Mitchell was his friend, and, that if the negroes were left or set down in the back part of the agent's field, it should entitle the witness to the negro before mentioned.

Jason Brinson. The affidavit of this witness supports that of Ashley, in every material point. The final answer that he imputes to Bowen, for the purpose of overcoming Ashley's apprehensions of General Mitchell, is, *that General Mitchell was his (Bowen's) friend.* It is proper here to notice, that Bowen has acknowledged the genu-

ineness of the letter from Drummond's Bluff, and the manner of his acknowledgment is worthy of notice. The original letter having been lost by Tobler, came into the hands of Governor Clark, through the agency of one William Moore. On the 30th October, Governor Clark presented this letter to Bowen, in the presence of the three persons named in the margin,* and demanded to know of him, whether the letter was his handwriting, and bore his signature? To which Bowen replied, "*It is useless for me to deny it, as my handwriting is so well known;*" which I understood to mean, "I would deny it, if I did not know that my handwriting could be so easily proved; but, since it can, it is useless for me to deny it." Governor Clark, however, considering the answer as evasive, pressed him by another interrogatory. "Are we to understand that you acknowledge this letter to be your's?" to which Bowen answered in the affirmative.

Bowen, in his affidavit, admits the correctness of the statement of his answers, as given by the above named witnesses. He states, also, that he was informed, at the time, that the object of the inquiry was not to injure him, but to ascertain General Mitchell's connexion in the affair; yet, anxious as he has since shown himself to repel the charge from General Mitchell, no solution of this incident then occurred to him, to remove from that gentleman the suspicion which the letter was so well calculated to excite. Perceiving the bearing of the letter on General Mitchell, the confession of its genuineness is wrung from him with manifest reluctance, and he leaves it, for the present, to explain itself. The plausibility of the explanation which he afterwards offered, will be considered in its proper place.

Colonel Morgan's affidavit. Before the arrival of the second parcel of negroes at the agency, and about the 20th December, 1817, Colonel Gideon Morgan, jun. of the state of Tennessee, being on his return home from Georgia, called at the agency at the request of Andrew Erwin, of Augusta, for the purpose of inquiring, it seems, if there were any negroes there, in which Mr. Erwin was interested, the said Andrew having been wholly ignorant of the previous operations of Bowen and his son James; and if such should be found to be the fact, for the further purpose of removing the negroes to a place of more safety, or making such other disposition of them as *he* (Erwin, I presume,) thought most advantageous for the benefit of the purchasers. (Colonel Morgan's deposition is stated wholly in the first person; he never mentions himself in the third person; hence, I presume, that by the relative *he*, in this sentence, Mr. Erwin is meant.) As Colonel Morgan's authority to act in the case, he was furnished by Mr. Erwin with a letter, in the name of Erwin, *Groce* & Co. addressed to General Mitchell, which is annexed to Colonel Morgan's affidavit, and in which not a word is said of the negroes, or any intelligible allusion made to them. Col. Morgan is there represented as "a gentleman of first rate integrity, who visits Fort Hawkins and the *Alabama territory on business.*" "Should he (says the letter,)

* S. Rockwell, Z. Lamar, L. Atkinson.

have occasion for funds, or any other services in your power, you will confer a singular favor on me by rendering him any service in your power. *We will accept his drafts, at any sight, for any sum he may think proper to draw on us for.*" Col. Morgan, in passing Fort Hawkins, (which is understood as being about sixty miles from the agency,) fell in with General Gaines, from whom he received a letter of introduction to General Mitchell, couched in the following terms: "This will be handed to you by Colonel Gideon Morgan, who is desirous to travel the nearest and best route to the Cherokee nation. *He has applied to me for a passport;* instead of which, knowing him to be a man of sterling worth, I take the liberty to introduce him to you, and request you will be pleased to view him as my friend. Should he request a formal passport, I beg you will be pleased to give him one."

The character of Colonel Morgan is unimpeached. The hostility of General Gaines to these speculations meets us at every step. Yet here are the two letters which Colonel Morgan bore to the agency; that of Mr. Erwin's, representing him as proceeding to *Alabama territory* on business; and that of Gen. Gaines, which represents him as requiring a guide and passport to travel by the nearest and best route to the *Cherokee nation.* Colonel Morgan, in his affidavit, represents himself as going home from Georgia to Tennessee, and as having called at the agency, at the request of Mr. Erwin, on the business before mentioned. That General Gaines took from Colonel Morgan himself his intended destination, is unquestionable; that his letter is merely such a one as the standing of Colonel Morgan justified, appears equally undeniable, and that General Gaines, so far from countenancing, counteracted this transaction in every stage of it, is so far from being denied by General Mitchell, that he seems to have been involved in a perpetual and rather irritated defence of himself against the charges of General Gaines, because of the suggestions of the latter gentlemen that he appeared either to be participating or conniving at this breach of our laws. I am at a loss, therefore, to apprehend the fairness of the following passage in a letter from General Mitchell to the Secretary of War, under date of the 3d of February, 1818: "The truth, however, is, that so far from those negroes having been brought here by speculators, they were claimed by gentlemen of respectability, *some of whom* came to me with letters of introduction from the General himself, couched in the strongest terms of friendship." The documents before me shew no letters of introduction from General Gaines to the agent, save only in the single case of Colonel Morgan; and it does not appear that this gentlemen claimed the negroes as his own.

That Colonel Morgan shewed the letter of Andrew Erwin in the name of Erwin, *Groce* & Co. to General Mitchell, cannot be doubted; because it constituted (according to appearances at least) the only authority which Colonel Morgan had to interfere with the negroes. Yet it is admitted by General Mitchell that he was willing to have delivered the negroes to Colonel Morgan: Colonel Morgan verifies

the same fact; and it is very clear that neither bond or security to carry them out of the United States, were contemplated to be required of Colonel Morgan as the condition of their delivery. He finally declined, however, to have any thing to do with them; and why he did so is very conceivable.

The engagement in the letter of Erwin, *Groce* & Co. that *they* would pay, *at any sight*, the drafts of Colonel Morgan in favor of General Mitchell, *to any amount*, is certainly calculated to suggest inquiries which it would not be easy to answer satisfactorily. In a case, however, so pregnant with remark, it would be a work equally endless and useless to comment on every topic that presents itself.

The fact of the introduction of such a number of native Africans at the agency, the mysterious and clandestine manner in which they had been introduced, and the circumstance of their being fed and supported at the expense of the agent, and protected by his authority, were calculated to excite suspicion and inquiry, and did excite them. It became necessary for General Mitchell to take some step to remove these suspicions, and to vindicate to the government his official purity; and both he and his assistants, Captain Thomas and Captain Mitchell, were soon heard to say that he had reported the negroes to the government, with the view of taking their orders in the case. This report was a letter, written by General Mitchell to the Secretary of the Treasury of the United States, of which an extract has been furnished by General Mitchell. It bears date on the 25th December, 1817, the same day on which Bowen wrote his letter from Drummond's Bluff to General Mitchell, and consequently before the arrival of the second parcel of negroes at the agency. In this letter General Mitchell says: "A certain Capt. Bowen, who had been for some time employed by Col. Hawkins in the Indian department, is now engaged *with some mercantile houses in Augusta and Savannah*, and, as their agent, has purchased, *some where on the St. Mary's*, a SMALL parcel of African negroes, and during my absence carried them to the *neighborhood* of the agency, on their way *to the Alabama territory*." After commenting upon the imperfection of the laws in restraint of the evil, he proceeds to say: "I told Captain Bowen I suspected him of being the importer, *upon which he immediately produced a bill of sale for them, duly executed in Camden county*, and solemnly affirmed that the bill of sale was made and executed *by the agent and part owner of a privateer, and were actually delivered to him in that part of Georgia*. Under these circumstances, I felt *I had no other course but to order him to carry them out of the United States;* and, when I reflected upon the facility with which such an order could be evaded, by just carrying them over the Spanish line, and re-introducing them; and believing, too, that the negroes were actually intended for the use of the parties interested, *who, I have no doubt, are large land-holders on the Alabama*, by purchase at the recent sales, and not for sale, I declined detaining them." After returning to the insufficiency of the laws, he proceeds, "My knowledge of the fact that the government had determined to suppress the present proceedings at Amelia

Island, and thereby prevent the *recurrence* of the OFFENCE, *had* some weight with me in the present case. If, in your opinion, the subject-matter of this letter, or any part of it, be of sufficient importance to be presented for the consideration of the President, or Secretary of War, you may so use it, in which case I shall hope for a communication of the opinion that may be formed of the facts stated, and for such instruction as may be thought proper for the government of my conduct;" that is, for the government of his conduct in any *future* case that might occur; for, as to the present case, the whole letter represents it as one which had been already disposed of. It could never, I think, be inferred, from the structure of this letter, that the negroes were yet at the agency. General Mitchell does not state what he *intended* to do, but what *he had actually done.* He says, indeed, that, on his arrival at the agency, which was soon after the arrival of Capt. Bowen and the negroes, he immediately ordered that they should not be removed, *until he had time to look* into the subject; an order, by the by, which was wholly unnecessary, if the General's witness, Bowen, is to be believed. The General did then look into the subject: he states his reflections and recollections of the laws of Georgia and of the United States, the result of which was, to use his own words, "I felt that *I had* no other course but to order him to carry them out of the United States." Then, after stating some other considerations, he winds up the sentence by saying, "*I declined detaining them.*" Who could infer from this statement that the negroes were yet detained at the agency, and that Bowen, so far from having gone to carry them out of the United States, had, to General Mitchell's knowledge, while he was writing this letter, gone back to the sea board for another parcel to add to them? Yet such are the facts, and I am sorry to be obliged to add, that this letter, from its apparent want of ingenuousness, is calculated rather to thicken than to dispel the suspicions that antecedent facts had unavoidably excited.

This letter proves that General Mitchell, at the time of writing it, knew,

1st. That those *Africans* had been unlawfully brought into the United States, and that Bowen's tale of the purchase in Camden county from the owner of a privateer who had brought them in, even if true, would not have altered the case. He must, consequently, have known that, under the act of Congress of 1807, neither Bowen nor those for whom he acted, nor any person claiming under them, could have any right or title whatever to those negroes, or to their services.

2d. That certain mercantile houses in Savannah and Augusta were interested in them; and if Bowen had not previously informed him, the letter from Erwin, *Groce* & Co. by Col. Morgan, and the visit of that gentleman to the agency, could not have left him in ignorance of the fact, that the house of Erwin, *Groce* & Co. was one at least of those houses.

3d. He knew that these Africans were intended for *Alabama*, and to be settled on the lands of those gentlemen in that territory.

4th. General Mitchell must have known that, to carry them to Alabama, was as clear a violation of the act of Congress, as to carry them into any one of the United States; for General Mitchell is a man, not only of uncommon intelligence and acuteness, but, as it appears by these documents, a lawyer by profession; and his talents, which are manifest, leave no doubt that he was a lawyer of distinction.

5th. That he had come to the conclusion to deliver them up to Bowen to be carried out of the United States, and this without any such bond as was afterwards required.

6th. That, under the exporting act of Georgia, of 1796, *he* was not the person authorized to take the bond and act in the case, for this is his account of the mode of proceeding under that law: the negroes are reported to *the Executive* of the state, with a view to their being sent out of the United States; to do this, *the Executive* orders them delivered to some one who will give bond, with security, for their exportation."

Not long after the date of this letter, and in the early part of January, 1818, Tobler and Oliphant arrived, with the second parcel of the Africans, and on the 28th of that month, General Mitchell delivered forty-seven of the negroes *to William Bowen and Jared E. Groce*, with the following passport:

"CREEK AGENCY, *28th January*, 1818.

"Captain William Bowen having brought to the Creek agency, some time since, forty-seven African negroes, which I had detained until time was afforded to inquire into *the circumstances of their transportation through the Creek nation*, and the said Bowen having *now* produced to me a bill of sale for the said negroes, duly executed in Camden County, Georgia, and *asserting* that the said negroes were purchased in that part of Georgia, and *intended for settlement in the Alabama* TERRITORY, *and not for sale;* and, in order to remove all difficulty or cause of *further detention*, has, this day, entered into bond, with *Jared E. Groce*, as his security, binding themselves to carry the said negroes out of the *States*.

"I have, therefore, caused the said forty-seven negroes to be delivered to the said William Bowen and the said Jared E. Groce, *for the purpose aforesaid*, and by these presents, grant them, or either of them, permission to proceed through such parts of the Creek nation as may be necessary, and *which they may find convenient*, in conveying the said negroes out of the United States.

"D. B. MITCHELL, *A. I. A.*"

The bond is not among the documents, but it is a nullity, because General Mitchell had no authority, nor even the color of authority, to take such a bond; and even if it had been a valid bond, the act of taking the negroes "out of the United States" into the Alabama *territory* would have been no breach of its condition, if the terms of the bond comport with those of the passport. Indeed, I consider the

passport, according to the fair and candid construction of its recital, to authorize, and to have been intended to authorize, a removal of the negroes to *the Alabama territory*. It is proper here to state, that this step was not taken, by General Mitchell, on a vague recollection of the laws which related to the case; for, in his letter to Governor Rabun, of 13th February, 1818, he says that, *previous to doing it*, he examined the act of Congress and the laws of Georgia with some attention. The slightest attention to which, I should have supposed, would have convinced a man of ordinary mind that the whole proceeding was irregular and illegal.

It is worthy of remark, that forty-seven of the Africans, only, were delivered to Bowen and Groce, or rather to Groce, (for Bowen did not proceed with them towards the Alabama,) leaving still at the agency the forty-two brought by Tobler. If to this latter number you add the five which had been delivered to Long, and carried away by him, (as before stated,) you will perceive that just one half of the whole number that had been brought to the agency were now carried away by Groce. Connect this fact with another, stated by Andrew Erwin, on his cross-examination, that when his son advanced to Bowen the funds which were invested in the purchase of those Africans, "he has been informed by James Erwin, that he had received from Bowen, *individual notes for about half the amount*," and you have the interest of Erwin, Groce, & Co. fixed at one half the number of the Africans, thus coinciding with the number taken away by Groce. *Whose those individual notes were*, we are not informed; James Erwin says nothing about them, and Andrew says no more than I have quoted.

It is here proper to call your attention to other documents which bear on the question of General Mitchell's interest in those negroes.

John Lambert's affidavit. This witness states that he was in the employment of General Mitchell, at the agency, as a gardener, from March, 1817, to the latter part of December, of the same year; he states the arrival of the Africans; he does not know who owned them; but he fed them with General Mitchell's provisions, by order of Captain Mitchell (the son.) He further states, that he understood from General Mitchell, Captain Mitchell, Doctor Long, William Bowen, and others, that there was a division made of said negroes among them, and a part of which was said to be General Mitchell's, which part was distinguished from the others by a piece of yellow feret or tape tied in their hair, and were sent to one Michael Elliot's, about two miles from the agency, and afterwards returned back to the agency and there remained when the deponent left the place.

John Oliphant's affidavit. This is the same witness and the same affidavit before adverted to in relation to another point. He states, that General Mitchell and Captain Bowen frequently came to see the negroes, after the second drove arrived. That some time after, the witness discovered that thirty or thirty-five of said negroes had a red flannel string tied around their wrists, which, the witness understood, was to distinguish General Mitchell's from Mr. Bowen's;

that, some time after this, a gentleman, they called Mr Groce, came and took away those that had not the red string on; these remained and were kept at work on General Mitchell's plantation until they were taken by M'Queen M'Intosh. &c.

You will observe, that these witnesses cannot be referring to the same designation. The occurrence to which Lambert refers, must have taken place before the arrival of the second parcel of negroes; that of Oliphant afterwards: besides, the color of the badge, and the mode of wearing it, are different.

Oliphant further states, " that Mr. Bowen paid him for all his services in bringing the negroes to the agency, and that General Mitchell paid him for his attention in taking care of them and issuing to them their provisions."

Henry Walker. This is an extract of a letter from Mr. Walker to Governor Clark, and consequently is not such evidence as would be received in a court of law.

I do not observe that this paper has been in the hands of General Mitchell, and to crown all its imperfections, the facts which it professes to state, are heresay merely. The character of the writer however, is sustained by gentlemen high in office; and as the document will necessarily pass under your eyes, it is within the sphere of the duty, which I understand to be assigned to me, to notice it in this report, intended only for your use.

The letter is dated the 7th June, 1820; and the writer states, that he understands General Mitchell intends, or has already taken the testimony of certain persons in the Creek nation, to exculpate himself from the charge which is now exhibited against him, and in order that Governor Clarke might have an opportunity of availing himself of evidence in the same place, he thinks proper to make the communication. He then states as follows:

" Whilst I was at the late talk on the Chattowhochie, I held a conversation with Mr. Doyle, marshal of the nation, on the subject of the African business, in which he informed me, that the accusation against General Mitchell was, to his knowledge, true, and that the money which the Creeks ought to have received through the agent, was paid by the agent for the Africans."

Gen. M'Intosh and Doyle have both informed me, that the agent solicited them to buy the negroes whilst they were stationed at the agency; that they refused to do it, unless he would make titles; *he* said *he* would not do it *himself* but that *Captain Bowen would.*"

M'Queen M'Intosh, the surveyor of the district of Brunswick and port of Darien, in Georgia, having been informed that these Africans were at the agency, proceeded to that place with a view of seizing them. He arrived four days after Groce had set out with his gang, pursued and overtook them about *twenty miles to the westward of fort Mitchell, on the road to the Alabama territory.* Groce claimed the negroes as his, and was thereupon made a prisoner by M'Intosh.

On his way back to the agency, he was deserted by a man of the name of Langham, who had promised to assist him as an escort.

but who perfidiously hurried on to the agency for the purpose of giving notice of M'Intosh's approach and intention, and enabling those who had charge of the negroes there, to put them out of the way. Several days previous to M'Intosh's arrival, Captain Melvin, of the fourth infantry, states, that he had observed fifteen of the Africans (the choicest of those brought to the agency by Bowen) building huts and clearing lands at the agency, the plantation of General Mitchell; on the night of M'Intosh's return to the agency, these fifteen were removed and secreted in the woods by William B. Mitchell, the assistant agent. M'Intosh states, that Captain Melvin accompanied him to the negro houses of General Mitchell, about one mile and a half from the residence of the agent, where they found fifteen Africans, which, from the severity of the cold, were suffered by him to remain in those houses; that on their return to the agency, he informed Capt. Mitchell of the seizure of the fifteen Africans, who replied, *that it was well;* Capt. Mitchell at that time gave no other information of any other Africans. On their return to the negro houses next morning, for the fifteen Africans, who had been seized the evening before, they received information *from the negroes*, that General Mitchell's overseer had the night before supplied a great many Africans with provisions, and taken them into the woods; that Captain Melvin and himself fell upon their trail *and found about fifteen in the woods*, who tried to make their escape, but were apprehended, and the whole thirty were brought to the agency; Captain Mitchell then delivered up eleven small Africans (children I presume) from the huts in the yard. Captain Mitchell, also, followed M'Intosh after he had proceeded about a mile and a half from the agency, on his return to Georgia, stating that he had left two or three more of the Africans behind, and that if he would send back for them they should be delivered, which M'Intosh declined.

M'Intosh further states, that the whole number of Africans seized at the agency was forty-one, instead of fifteen, the number reported to him by Col. Brearly, which last was the number given to the Colonel by the agent. That Col. B. also informed him, that General Mitchell claimed a portion of the Africans that had been left at the agency. The negroes thus seized by M'Queen M'Intosh were carried and delivered to the collector of the port of Darien; and some proceedings seem to have been had against them, in the courts at Savannah; of what kind I cannot state, no copy of the record having been furnished me.

William Moore, affidavit and letters. If this witness is to be believed, there is an end to this question; the guilt of General Mitchell is placed beyond doubt. This man was a public blacksmith at the agency, and seems to have been (at least it may be believed) of some trust and confidence there. He states, that, having been requested by Captain Mitchell, the son, to search the General's desk for some letters from Arbuthnot, which the General was anxious to bring to the city of Washington, he found in his search two letters from Bowen to General Mitchell, of which, under a sense of public duty, he made

copies, and handed them to Governor Clarke; he swears that the originals were in the hand writing of Wm. Bowen, and, he believes, are now in the possesion of General Mitchell, if not destroyed by him or some other person at his request. These letters are as follows:

MILLEDGEVILLE, *7th March*, 1818.

Mr. Groce arrived here last night on his way to the Alabama, and leaves this morning by the upper route. I am happy to state that Mr. G. has succeeded in bridling his tongue in some measure; he appears sensible of the importance of being less communicative to the inquisitive. He has averred to me last night, by many protestations, that he never will, in any court, divulge any thing to the prejudice of any party, and further states that he would go to all lengths to serve any of the party concerned, and requested me to name to you his wish that you would signify your belief that he was not concerned in the introduction. From the very eccentric character of Mr. G. it would probably be well to indulge him in this particular, as I fear nothing but from his apparent anxiety to convince the public, by explanations, of his innocence, a letter from you, stating to him your belief that he was merely a bonds man for the removal of the —— would satisfy him. He states that if the party will justify him, he will not stop at any thing [in] the justification of the others. Mr. Andrew or James Erwin will be here this day, and I can be able to hear on what footing the affair stands in Savannah. I cannot understand Mr. G's explanations any more than if he was speaking Congo; however, I have from Mr. G. that he has employed Mr. W. S. Bullock, for an advocate. Mr. G. presented himself to the district attorney, and has been released with a certificate that libel has been lodged against him for the illegal introduction of slaves.

I learnt yesterday, that the governor has received a letter from the district attorney, informing him that the negroes would be libelled on the part of the United States. It seems that the Governor has written to the collector at Darien, wishing to know his opinion of the propriety of having the * * * libelled in behalf of the state of Georgia, or letting them be libelled by M'Intosh, in behalf of the United States; the collector informed, that it was his opinion that the best method for the present, was to libel in behalf of the United States; prosecute Mr. G. and force him into explanation of other discoveries. This I have mentioned to Mr. G. who swears that a court shall never draw from him any thing detrimental to the character or interest of any one whatever.

I find that it will be most prudent to humor the capricious notions of that consummate fool, to secure his, or rather prove his silence on the affairs.

I have never dreaded any thing but his imprudence; however, hope he will now stick to what he has promised.

I am, very respectfully,
Your obedient servant,
WILLIAM BOWEN.

General D. B. Mitchell,
Creek Agency.

Milledgeville, 23*d March*, 1818.

I wrote you last mail respecting the bills of sale, and for your opinion of the best probable means of conducting the affair. I have procrastinated my departure to Savannah, to hear from you. It appears to me best, that the last parcel should be claimed by me, from a right of purchase from Tobler; his right could be made from a purchase in Camden county, or from East Florida, as the case may be thought most safe: in the case of Tobler's claim, if he does not claim from a purchase in Camden, they cannot prove that they ever were in the state of Georgia.

Captain Thomas speaks of going to Savannah with me, and if I can get the whole on board, I can make some apparent arrangement with him for the twenty-eight of yours: I should be very glad to hear from you as soon as possible, and if no immediate chance offers, perhaps Brady could come in again and bear your advice. Several of the attorneys who have attended court here, have expressed their opinions, that the property could not be lost, nor be kept from me. Very little is said of the matter at all, and it seems to have died away since your publication.

I remain, with much regard,
Your most obedient servant,
WILLIAM BOWEN.

General D. B. Mitchell,
Creek Agency.

It is only necessary to add to these letters at present, that the character of Moore is supported by a host of witnesses, some of whom hold the most respectable offices in the state, and among the rest, by Governor Clark himself; while, on the other hand, he is represented as among the basest of characters, and affidavits have been taken to support this representation, which will be hereafter referred to.

Thus far the circumstances which appear to me as going to support the accusation.

I turn now to the evidence in defence; and as explanatory of it, will give an epitome of General Mitchell's several communications on the subject, for the purpose of shewing what he admits, and what he denies; and, consequently, the points to which his evidence is ap-

plied. As I proceed with this analysis, I propose, in order to prevent the necessity of returning to these communications again, to suggest any circumstances which strike me, as inconsistent with the claim of entire innocence on the part of the agent.

I have already presented the substance of the agent's communication of the 25th December, 1817, and noted my objections to it.

The next communication of the agent is, a letter to the Secretary of War, under date from the Creek Agency, the 3d February, 1818; and, consequently, written before M'Intosh's seizure of the negroes, but after the parcel under Groce had left the agency. In this letter the agent enters into a defence against several accusations which had been lodged against him by General Gaines with the Governor of Georgia, and which had been published in the Milledgeville Gazette, of the 27th January, 1818. Among others, he takes up the subject of the Africans, thus:—"As to the African negroes of which the General speaks, I have already communicated the facts in relation to them, to the Secretary of the Treasury."

This alludes to the letter of the 25th December, on which I have already commented, and which I think it manifest, did not contain a communication of the facts. Among other things, the letter was written before the arrival of the second parcel of negroes, and this being a new fact, having occurred since the date of that letter, but before the date of this which we are now examining, ought to have found a place in this; let us see if it does: The letter proceeds "and in addition to that communication *have now only to add*, that after I had made that communication, and *on the most mature reflection and consideration of the act of Congress and the law of Georgia, I deemed it best to require the party claiming the negroes, before I permitted their removal, to give bond and security, to carry them out of the U. States; because, that is the course pursued under the law of Georgia, and appeared to me to be the proper course.*"

There is nothing here, you perceive, of the parcel which had arrived, after the communication to the Secretary of the Treasury.

There is nothing said of the forty odd negroes which yet remained; but the statement is calculated (like that to the Secretary of the Treasury) to convey the idea, that all the negroes which had arrived at the agency, at the time of its date, had been sent off out of the United States, and the sequel of the statement tends to confirm this idea. The letter proceeds, "*the scarcity of provision* at this place, made their detention extremely inconvenient; *and hence, I became anxious for their removal*, otherwise I should have delayed acting in the case, until I had received the orders of government. The negroes having been here, however, and my taking no care to explain their situation to every one I saw, left room for conjecture; and the General sees in this case an organized system of opposition to himself, and consequently to the public service. The truth, however, is, that so far from these negroes having been brought here by speculators, they were claimed by gentlemen of respectability, some of whom came to me with letters of introduction from the General himself,

couched in the strongest terms of friendship. I do not know that the General was apprized of the object for which these gentlemen visited the agency; but, I mention the fact for two reasons; first, to shew that the General is entirely in error, when he asserts, that negroes have been recently carried to the agency by speculators, by whom a spirit of opposition is excited to his measures, injurious to the public service; and second, *because, it is my desire that you should know every material fact which takes place here,* and *the fact* in this case really is, that the negroes it appears are the property of some respectable gentlemen, purchased by an agent for their use, and not one of them for sale; and *were intended for settlement on the Alabama, but will now, I am confident, be carried beyond the limits of the United States.*"

This is the whole of the agent's letter of 3d February, which relates to this case, and on which I think it my duty to remark: first, that the *scarcity of provisions* is a new motive for the permitting the departure of the negroes, which finds no place in the agent's letter of 25th December: second, that the course of proceeding under the law of Georgia, as described in this letter, is radically different from the account given of it in the letter of the 25th December. In this last mentioned letter, the course is represented to be, to report the negroes to *the Executive of the state.* The *Executive* then gives the order for their exportation, and takes the bond, &c. 3d, That every consideration urged for permitting the departure of the negroes, applies to them *all;* and the letter gives the impression that *all* had gone, which is a material variance from the facts of the case. 4th, That the General here expresses his confident belief, that the negroes, although originally intended for Alabama, would now be carried out of the United States; the fair meaning of which is, that they would not be carried to Alabama; while his passport authorized them to be carried to that territory: But, the great objection to the communication is, that it omits to state the material facts which had occurred, since the date of the letter of the 25th December, and before the date of the letter under consideration, to wit: The arrival of the second parcel of Africans, under the direction of Bowen, and this, too, after he had had an interview with Bowen, on the arrival of the first parcel; and second, the fact, that, at the date of the last letter, nearly one-half of the Africans still remained at the agency. It is difficult to conceive, that General Mitchell was not aware, that these were among the most suspicious facts in the case. They ought, therefore, to have been promptly and frankly stated, and accounted for. The total omission to notice them, and what is worse, the giving an aspect to the case, in both these communications, calculated to keep them out of view, and to make an erroneous impression on the government as to the true state of the case, is, to say the least of it, extremely unfortunate.

Will it be said that, although General Mitchell, in stating, in this last letter, the exportation of these people, uses and repeats the terms "the negroes," which are equally applicable to them all, yet, inas-

much as he refers to his letter of the 25th of December to the Secretary of the Treasury, he must be considered as alluding to the negroes therein mentioned? the answer is, that even if this were a fair view of the case, (which it certainly is not, General Mitchell was then bound to state, as a new and substantive set of facts, the arrival of the second parcel, the detention of that parcel, and the reason which existed for the discrimination he had made. Charity, and even credulity, cannot suppose that he thought these immaterial facts, more especially after the sample he has given us of what he thought *material*, in relation to the respectable gentlemen who had come to claim these negroes, bringing letters of introduction from General Gaines.

The next communication is to the Secretary of War, and bears date, Creek Agency, 18th February, 1818. In this letter he gives a very acrimonious account of the proceedings of Mr. M'Intosh and Captain Melvin, and says, that "if they had seized only those which had been given up on bond and security, under the impression of that being an unauthorized proceeding, he should not have complained, although he should have conceived their conduct unwarrantable; but to seize by force those in my possession, *regularly reported to the government, and the commanding officer (Col. Brearly) duly notified of the fact*, and even of the fact too, of the official opinion of the district attorney, being required in the case, and assured by me that they should not be removed upon any terms, until that opinion was received, *or the government should order the course to be taken*, I can find no apology for their conduct."

This is the first official intimation from the agent of the fact, that any portion of the negroes had been detained at the agency, yet he speaks of them as having been *regularly reported to the government*. I should have thought, from the statement, that some communication had been made by the agent to the government other than those that I have already brought to your view, were it not that he himself, in his letters to the Secretary of War of the 25th March, 1818, and 27th July, 1820, refers to all the communications which he had made to the government on this subject, and notices none other of prior date to this, under consideration, save only his letter of the 25th December, 1817, to the Secretary of the Treasury, and of the 3d February, 1818, to the Secretary of War; and in neither of these, as I have shown, is there any communication of the fact, *that any negroes had been detained at the agency*; that he alludes, in this statement, to his letter of the 25th December, 1817, as constituting the regular report to the government, I collect from the assertion which accompanies it, "and the commanding officer duly notified of the fact." The commanding officer was Colonel Brearly; and General Mitchell has proved, by his son Captain Mitchell, that on the 20th or 21st of the month of December, 1817, the General returned to Georgia, accompanied by Captain Thomas and the witness, to spend Christmas with his family: that at Fort Hawkins he fell in with Colonel Brearly, whom the agent informed of the Africans being at

the agency, and *of his intention to detain them, and report the case* to government; and the witness adds, that he knows a letter was written to the Secretary of the Treasury on *Christmas day*, reporting the negroes, and that he had since seen the Secretary's answer. The letter of the 25th December then is the letter relied on, to authorize the assertion, that the negroes, detained at the agency, had been regularly reported to the government; whereas this letter states, that he *had not detained them*, but had ordered Bowen to carry them out of the United States: besides, the letter of the 25th December could not possibly have had any allusion to the negroes which had been detained, for their arrival at the agency occurred after the date of that letter; the letter expressly related to the negroes brought thither by Bowen himself, and for which *he then shewed a bill of sale to himself*—this was the parcel, according to the description in the passport, which had been delivered to Groce; whereas, the last parcel, and consequently that which was detained, was covered by a bill of sale to Tobler, the Indian. This representation of General Mitchell, that he had reported, to the government, the negroes detained at the agency, at the time of M'Intosh's seizure, is so boldly made, when he must have known, or at least supposed, that his communications were here to confront him, that charity might have imputed the statement to a want of recollection; but for the discovery of the fact, that the General keeps copies of his correspondence. In relation to his letter of the 25th December, I have nothing before me except the extract furnished by himself, the original having been misplaced; so that if it contained any thing beyond this extract, which would have justified the statement in question, (and which extract was furnished to the Department of War, for the information of that Department, as to what the General done,) the omission to insert it is unfortunate. It is not conceivable, however, that this is the case.

Before I leave this letter of the 18th February, it is proper to remark, that, although we have it here officially announced, for the first time, that a part of the negroes had been delivered up, on bond, to Groce, and the residue detained at the agency, no reason is yet given for the discrimination, much less is any thing said of the fact of their having been introduced in separate parcels, and the last parcel after the agent had had an interview with Bowen.

"It is now insinuated," says General Mitchell in this letter, "as an excuse for this flagrant contempt, that I am interested in the negroes; and, as evidence of the fact, that I have fed them, and had them at work; and that, whilst on their way to this place, they were seen by some one, in the possession of Indians, who said they were taking them to the agency, and a variety of other *surmises* equally futile."

This word *surmises* is loosely used in this place; for the circumstances of feeding them, and having some of them at work, together with the acts of distributing articles of clothing among them, and administering medicine to the sick, are immediately admitted by

the General himself; and as to the fact of their being met in the possession of an Indian, who was bringing them to the agency under the superior authority of Bowen, and who in fact did bring them there, it is in proof, and is not controverted. These were not *surmises*, therefore, but *facts;* and yet, facts, which, of themselves, (so far as feeding, &c. go,) are futile, as to fixing any degree of guilt on General Mitchell. The most innocent and honorable man, on whom such a body of helpless human beings had been lawlessly thrown, would have acted in the same way, while they were necessarily in his care. I think, therefore, that no importance is to be attached to these facts of feeding, clothing, &c. while the negroes were, *necessarily*, at the agency.

In this same letter, we meet with General Mitchell's first denial of the charges against him; the first at least communicated to this government. It is in these words: "Sir: I assure you upon my honor, I had no interest whatever, directly or indirectly, *in the purchase or introduction of those negroes;* neither had I any knowledge or information of *the intention of the parties interested to bring them here, until their actual arrival.*" On first reading this document, I was transiently struck with the special form of this denial, as not covering the whole case. I dismissed it, however, as a subtlety which ought not to be permitted to enter into the judicial consideration of such a subject, fraught with such serious and affecting personal considerations; and should have probably thought of it no more, but for the perpetual recurrence of the same form of expression, not only in the General's other communications, but in the affidavits of his witnesses. A coincidence of expression so singular among so many various minds of different orders, naturally excited me to attend to the terms; and I perceived, at once, that the truth of the assertion that General Mitchell had nothing to do with the original *purchase or introduction* of these Africans, and that he was even *ignorant of the intention of the parties to bring them to the agency*, until their actual arrival there, was perfectly compatible with a guilty connection formed with Bowen, after the arrival of the first parcel, and with that connivance which General Gaines had charged on him; and pursuing this train of thought, it appeared to me that although there were circumstances tending to the belief of *a previous general understanding*, at least between Bowen and Mitchell, yet the evidence was much more strong to establish the probability of a *subsequent connection.* It is not necessary to stop for the purpose of bringing together the instances in which this same form of expression recurs, in the letters of General Mitchell and the affidavits of his witnesses; they will present themselves as we go along; and if, at least, you shall think the criticism more ingenious and severe than solid, you will easily throw it out of your consideration of the case.

The next communication of General Mitchell is a letter of the 19th February, 1818, addressed to the Secretary of the Treasury, as I learn by reference; which, however, is not before me.

On the 25th March, 1818, the agent addressed another letter to the Secretary of War, in which he answers various charges that had been preferred against him by General Jackson, and among others this charge of the African negroes. In this, he goes into a statement as to those delivered to Groce; censures Colonel Brearly for certain misstatements, which he charges him to have made on the subject, and this the more severely, because he says Colonel Brearly was fully informed of all his proceedings; and, among other things, of his having declined bonding any more, after the forty-seven, "*in consequence of understanding that there was some difference of opinion as to the proper course to be pursued with regard to them.*" This is the first explanation of the cause why the last parcel was detained; but as they were in his possession when the first parcel was delivered to Groce, we are yet to be informed why they were not delivered at the same time.

This passage, however, calls up a still more serious question. *When* did this difference of opinion occur, and when was it made known to General Mitchell? When he wrote to the Secretary of War on the 3d February, he suggests no such difference of opinion; he represents the case as quite an easy one, and gives an impression that the whole of the negroes had been sent out of the United States; it was only four, or at the most, five days afterwards, that they were seized by Mr. M'Intosh; for the General's letter to his son, on this subject, annexed to the affidavit of the son, bears date on the 8th of February. This difference of opinion, then, which had changed the General's course as to the negroes, must have occurred and been made known to him between the 3d and 8th of February, of which there is no evidence in the case, and, I fear, no probability, in fact. Even in his letter of the 18th, he does not place the past detention of these negroes, on any such difference of opinion as this; but on the ground of his having reported the case to the government (by his letter of the 25th December) and his waiting their orders, or the opinion of the District Attorney.

In the letter now under consideration (25th March, 1818,) the agent says to the Secretary of War, "Permit me to reiterate the assurance already given you, that I not only had no interest *in the purchase of these negroes*, but *was entirely ignorant of the purchase and introduction of them*, till brought to the agency." In Gen. Mitchell's letter of the 28th April, 1818, to the Secretary of the Treasury (of which an extract, furnished by the General, is before me) he takes no notice of the detention of a part of these negroes at the agency, nor of any such difference of opinion as that which he assigns in his letter of the 25th of March, to the Secretary of War; on the contrary, he vindicates the course taken in bonding and sending out the negroes, as the only course, as to the propriety of which he speaks of no opposing opinions.

In this letter, he also says, "As to the purchase and introduction of those negroes, I give you my solemn assurance that I had neither knowledge of, nor participation in either."

Here the communications of General Mitchell end, until the charge was revived by Governor Clarke, and presented in such a form as made it the duty of government to examine it by evidence. A judicial investigation of the subject had now been barred by the act of limitation of the United States. An attempt was made to institute such a trial before the circuit court of the United States in Georgia, but was stopped at the threshold by the court, on the ground of the bar by the act of limitation. The grand jury, however, took up the subject on general grounds, and founded a presentment on it. The legislature of the state, too, expressed its indignation at the illicit continuance of the slave trade, in a report, which, together with the presentment of the grand jury, before mentioned, and the sentence of the court, have been communicated by Governor Clarke, and are now before me. The government, desirous in a case so deeply interesting to the country on one hand, and to the individual, one of the officers of government thus accused, on the other, required that the facts should be presented in the form of affidavits, taken on notice; a direction which was so imperfectly executed, that it was repeated, and in the mean time both the governor of Georgia and General Mitchell were mutually furnished with copies of the evidence which had been communicated by the other.

The first communication of General Mitchell with which I meet in this new series, is his letter to the Secretary of War, dated the 27th July, 1820. This letter accompanied the General's original evidence, and comments on that, and on the accusing evidence.

On the fourth page of this letter, he makes the first communication to the government with which I have met, of *the separate parcels* of Africans brought in by Bowen, in succession. He again admits the interview with Bowen, on the arrival of the first parcel, but says that he remained only one night at the agency, "consequently, had no time or opportunity to make any arrangement with him on the subject." What General Mitchell is represented as having said to Loving was quite enough, and could have been said in a very few minutes. He proceeds, "Neither did he know that I had seized the first parcel of his negroes, until the arrival of the last parcel, when I informed him of the fact, and detained the whole; that is to say, that General Mitchell had seized the first parcel, but kept Bowen in ignorance of that fact, till the arrival of the last parcel, which was about the first week in January, when he informed him of the fact and detained the whole; this statement is supported by the evidence of Capt. Bowen, Capt. Mitchell and Capt. Thomas; but is perfectly irreconcilable with the agent's letter of the 25th December, to the Secretary of the Treasury, in which he represents himself *as having declined to detain any of them*, but having ordered Bowen to take the whole of them out of the United States.

In the course of this letter, Gen. Mitchell comments on the evidence furnished by Governor Clarke, and before I take up the General's own evidence, in order, I think it proper to state what he has

said in regard to the two first witnesses presented in support of the charge, Loving and Woodward.

In regard to Loving, he says, in substance, that he has no recollection of any such conversation as Mr. L. relates; that Mr. Loving was a stranger; and that it is very improbable that he would have given advice to a stranger, which he would not have given to one of his own family. He states, also, that he has heard from a gentleman of veracity that the very conversation which he represents himself to have had with him, (Mitchell,) he had with that gentleman, *who replied precisely in the language which Loving has attributed to the General*; and the General leaves it to any man of sense to determine whether it be reasonable that he would have held such a conversation with a stranger. Who this gentleman of veracity is, we are not informed by General Mitchell. We learn, however, from the affidavit of A. Erwin, that it was Capt. Thomas, one of the General's assistants at the agency, as we have seen; and Mr. Erwin further states, that, on his suggesting the probability of this mistake to Loving, he had appeared much mortified, and expressed his regret at having given this information. The whole of which statement Loving flatly denies in a subsequent affidavit, and declares to be a falsehood destitute of all foundation.

But these remarks of General Mitchell suggest the following reflections: Why should any man of sense pronounce it improbable that he should have held such a conversation, or given such advice to a stranger? There can be but one answer, so far as I perceive, which is, that the advice was criminal, or the course advised illegal; for, if neither, there can be no reason why Gen. Mitchell should not have held such a conversation with a stranger as soon as with any other. Gen. Mitchell, then, was aware, in July, 1817, of the criminality or illegality of this course, and yet *his acts*, with regard to Bowen, and the Africans imported by him, are *substantially* in unison with the conversation which is imputed to him by Loving.

Again, is it probable that, in a case of so much importance, Loving should have mistaken Capt. Thomas for the agent, and, still more, is it probable that Thomas should have rendered the very answers which Loving attributes to Mitchell; that Thomas should have advised Loving to bring Africans to the agency, and that *he, Thomas, would protect them there, and give facilities for their sale at the reserve*, &c. more especially, when we are told by Thomas, himself, that the agent (whose power at the agency was sovereign,) had uniformly advised him to have nothing to do with such a business, *for, that those who did would not only involve themselves in trouble, but would also destroy their reputations?* The assumption of these answers by Capt. Thomas may be an evidence of gallant self-devotion in behalf of a friend, but, I confess, the statement surpasses my credulity. Loving's character is most respectably supported; and, if his evidence required any extrinsic circumstances to render it probable, those circumstances would, I think, be found in the conduct of the agent himself, in the affair of Capt. Bowen.

With respect to the evidence of T. Woodward, which, as you will recollect, is a hearsay statement only, from Colonel Howard, General Mitchell observes, that, as Mr. Woodward is of respectable family and connexions, and some of them his particular friends, he will just observe that Col. Joseph Howard, from whom, he says, he had his information, is living on the Alabama, and is certainly better evidence than Mr. Woodward. He thinks that Col. Howard will not support the statement of the witness as to bringing Africans into the United States, in violation of law. "I have no doubt (says he) but that I have had conversations with many upon this subject, for, at one time, it was much spoken of, and some have reduced it to practice, while others, *like myself*, have only talked of it."

Mr. Woodward's statement of Col. Howard's conversation is no evidence which would be received in a court of judicature had it even been on oath. Not being even on oath, it ought not to have been offered. Why the affidavit of Col. Howard has not been taken on either side, I am unable to conceive. Gen. Mitchell was not bound to take it, and yet it is a matter of surprise to me that, knowing the residence of the witness, his high standing, and the use which had been made of his alleged conversation, the just sensibility which Gen. Mitchell seems to feel for his own character, had not impelled him to call on Col. Howard to rescue him from this imputation.

The words which I have quoted from Gen. Mitchell above seem to me to mean, in their fair and obvious sense, that Gen. Mitchell had, *at one time*, talked of embarking in the business. They are used in relation to the conversation which Woodward, on the report of Col. Howard, imputes to him; a conversation which implied his disposition, after his acceptance of the agency, to engage in such an enterprise, and to furnish funds for it. At this time, too, he had reason to believe that the affidavit of Col. Howard might be taken against him, and how it would result was yet uncertain.

It was provident, therefore, to anticipate any result of such an affidavit by an explanation. The words are to be construed in reference to the occasion and circumstances in which they are used. When, therefore, he says "I have no doubt but that I have had conversations with many persons upon this subject, for, at one time, it was much spoken of, and some have reduced it to practice, *while others, like myself, have only talked of it*," I understand him to mean, "while others, like myself, only talked of doing it," which amounts to an admission that he had at one time talked of doing it, and is substantially all that either Woodward or Loving state.

I proceed to General Mitchell's testimony in the order in which he has offered it.

William Bowen. Affidavit, No. 1. He left fort Hawkins, where he had resided for some time, in July, 1817; went to South Carolina to visit his friends; after a short time, proceeded by Augusta to Savannah; here he entered into a mercantile partnership with Stantenbry & Thorn, in a store, to be kept by Bowen, in Milledgeville. Having selected his goods, and while employed in forwarding them,

he was informed by a friend of the great speculations which were to be made in sugar and coffee, at Amelia Island; determined to procrastinate the opening of goods in Milledgeville till he could visit Amelia Island, which he does; disappointed in the price of sugar and coffee, and having been left by the vessel in which he intended to return to the Main, he is detained in the island, and, during his detention, a cargo of negroes arrived in one of Aury's privateers, which he purchases with funds furnished wholly by the credit of Erwin & Co. and Stanterbry & Thorn. He then details his journey with the first parcel of these negroes to the agency, where he is received by Capt. Thomas, who advises him to proceed on his route before the arrival of Gen. Mitchell, who, if he found the negroes there, would probably interfere with them; but this, he told Thomas, was impossible, as the negroes were worn down with cold, fatigue, and hunger, and could not move till their strength was recruited and he could procure better transportation; besides, he told him he had left a number of the smallest ones behind, *more exposed than he had expected.*

Finally, having arranged with Thomas to supply provisions for the first parcel, he returns for the second. [not a word of his interview with General Mitchell; it is obvious that this is kept studiously out of sight.] He then proceeds to detail his operations with the second parcel of negroes, admits that he wrote the letter from Drummond's Bluff, but this was without the consent or knowledge of General Mitchell, it was purely to secure the passage of the property, should it meet difficulty; he never intended, after the arrival of the negroes at the agency, for that letter to be produced or delivered to the agent, and had instructed the bearer to destroy it on his arrival. After seeing the bearer of it, after the negroes had arrived, he asked him for the letter, and was answered, that it was lost in the woods; and, thinking that the letter would never be found, he was satisfied. On his arrival at the agency, he was informed by General Mitchell that he would detain the negroes until he could be better satisfied with the circumstances of their transportation through the Creek nation. He *then* informed General Mitchell that he had purchased the negroes in Camden, and intended going westward with them. [General Mitchell, in his letter of the 25th December, 1817, to the Secretary of the Treasury, says, that Bowen gave him this information at *their first interview;* that is, on the arrival of the first parcel, and shewed him the bill of sale]. General Mitchell declared that he should detain the negroes '*till he could hear from the Government on the subject.* Finally, *Jared E. Groce* came to the agency with a letter of introduction to Bowen from James Erwin, and Groce, as the agent of Erwin & Co., and, for the purpose of securing the 25,000 dollars which they had advanced, entered into bond with Bowen, to carry out of the United States as many of the negroes as he wished, who were to be under his control, as collateral security to the Erwins; a selection of forty-seven was made out of the whole parcel, and delivered to Groce on bond, as already stated. Bowen returned

to Georgia to procure security for bonding the rest, which was superceded by the seizure made by M'Intosh. He then states what was done with the negroes after their seizure, which is irrelevant to our inquiry. He then avers that Gen. Mitchell never had any knowledge of *the purchase or introduction of these negroes into the U. States;* that he paid not one cent towards the purchase, that the whole sum was raised through the aid of the beforementioned firm; and *that General Mitchell knew nothing about it until the negroes were taken to the agency, and reported by him to the Government.* That, but for the interference of Gen. Mitchell, he would probably have had his property safe in *West Florida, where it was intended that they should be carried.* "Any imputation, therefore, says Bowen, that General Mitchell was concerned with me in the *purchase and introduction* of that property is *mere conjecture only.*"

Before I proceed to the cross-examination of this witness, I will remark that, long before the taking of this deposition, not only the letter from Drummond's Bluff, but the two letters purporting to have been written by Bowen to Gen. Mitchell, from Milledgeville, had been before the public, and had produced considerable excitement. The two last letters, if genuine, placed the guilt of General Mitchell beyond all doubt, and were consequently resisted by the General and his friends, by every means which they could command. The General had denied, on oath, that he had ever seen such letters; his son Captain Mitchell had denied, on oath, that he had ever given Moore that direction to search his father's desk for letters from Arbuthnot, from which the discovery was alleged to have proceeded; and both Captain Mitchell and the General's clerk, Imlay Vanscriver, had sworn that they had never seen such letters in the General's desk, or elsewhere, and that they must have seen those, if they had been there. Bowen had denied the authenticity of the letters *in a hand bill,* which is annexed to his affidavit, and declared them base fabrications. The reputation of William Moore, the alleged discoverer of these letters, was assailed with great vehemence. He was accused of having forged an order for money, from one Timothy Barnard; of having forged a bill of sale from Tobler for the last parcel of negroes, and having attempted to suborn witnesses to attest it. *But still the oath of Bowen, denying that he had written these letters, was wanting.* When, therefore, in the body of the affidavit before me, his mind was called to this subject by his admission of the letter from Drummond's Bluff, it is surprizing that he did not avail himself of the same solemn occasion to do justice to himself and Gen. Mitchell, by denying the two last letters which he had already denied in his published hand bill. This, however, he does not do: he says not one word of these letters, in the body of his affidavit, which is the whole of his voluntary statement: and to increase the suspicion arising from this circumstance, when, on his cross examination, he is directly interrogated as to these letters, he twice evades the question, altogether, and, each time, so exactly in the same words, that it is extremely difficult for the most candid man to resist the conviction, that the evasion, as well as the form of it, was premeditated and settled.

He is asked by Governor Clarke, did you not write the letter, or one similar to it, of the 7th March, 1818, to the agent, General D. B. Mitchell, which was published in the Journal sometime since, and which Wm. Moore states he copied, &c.?

The answer is—"*I have already denied the authenticity of that letter, and I consider Moore a forgerer.*"

He is then asked, did you not write the letter of the 23d March, 1818, &c.?

His answer is—"*I have also denied the authenticity of that letter, and I answer as above.*"

It was true he had already denied the authenticity of those letters, but not on oath; it was in a handbill. And it might be true he considered Moore a forger, in regard to the two acts of forgery already mentioned, of which he had been publicly accused—the order from Barnard, and the bill of sale from Tobler. Were Bowen now to state, on oath, that he did write those letters, he could not be convicted of perjury on the strength of those answers; for he has not here denied them on oath, nor has he said any thing at all incompatible with the fact that he did write them.

Are these the terms which would have been used by any man who was in truth innocent of the charge of having written those letters? For my own part, the evasion appears to me so gross and palpable, and withal so *studied*, that I consider it as very little short of a confession, that he did write the letters.

On this cross-examination, he states that he did "once give Gen. Mitchell a certificate that he was not concerned *in the purchase or introduction of these negroes into the United States.*"

He is asked "Do you not know that the agent expressed himself in a way *from which you inferred his permission to convey the second gang of Africans to the agency?*"

The answer is—"He never expressed *any approbation* to me." Here is another evasion; the question was not as to the expression of *approbation*. In the rest of his cross-examination, he states, in substance, that he does not know that General Mitchell claims any part of the Africans that had been brought to the agency *in his own right*.

He never had any conversation with General Mitchell as to the profits to be made on speculations in Africans, *previous to his taking the Africans to the agency.*

General Mitchell might have been apprised of Long's taking off the five negroes, for all he knows. The witness refuses to answer a question concerning Jared E. Groce, (which stands connected with the authenticity of one of the last of the letters before mentioned) on the ground that it relates to *his and Groce's private affairs.*

In answer to General Mitchell, he states the interview which he had with the Governor at the time of his confessing that he wrote the letter from Drummond's Bluff. He understood from his excellency, and, probably, some of the other gentlemen, that the object of the inquiry was not to injure him, as most of them were friendly to him, but to ascertain General Mitchell's connection in the affair. He does not recollect that any particular promise was made him.

He says, on further examination, that General Mitchell did not know from *him* that he intended to carry the second gang of Africans to the agency in the winter of 1817, 1818.

Being asked whether the agent, or some one for him, did not purchase *or come to an understanding with him* for some of the Africans?

He answers, "the agent did not purchase any of me. I had many offers by sundry persons to sell, but not for the express *use* or implied *use, as I understand,* of General Mitchell. I invariably declined selling any of them to any one."

Andrew Erwin's affidavit, No. 2. This is a very long and verbose affidavit—to give you an idea of it, although the witness knows nothing personally of the guilt or innocence of General Mitchell, five folio pages of the affidavit are employed in giving us a history of the oscillations of the witness' mind as to General Mitchell's guilt. The number of these vibrations, and the causes which produced them, are detailed with a minuteness and prolixity rather amusing than instructive; until at last, the witness, *on the representation of General Mitchell and Captain Bowen,* settles down in the conviction that the General was entirely innocent "of any concern, interest, or participation, *in the purchase or introduction* of the negroes alluded to." According to this witness, Groce also is innocent—not only innocent, but, it seems, Mr. Erwin had some difficulty in appeasing the virtuous indignation of Mr. Groce, upon the discovery that his partners had been concerned in a breach of the laws. "I convinced him, I believe," says the witness, with the utmost apparent simplicity, "of my innocence in any such trade." To make sure work of it, however, he sent or wrote for his son, James Erwin, to Savannah, to explain the true situation of the business. James Erwin then came to Augusta, and while there, Mr. Groce returned, and *James Erwin* then expressed *his* innocence in the business, as above. This Mr. Groce, whose moral delicacy the Messrs. Erwins manifested so much solicitude to soothe, is the same Jared E. Groce, whose conversation with Mr. Breithaupt has been already detailed. Andrew Erwin swears, *in the most positive manner,* to use his own words, "That Jared E. Groce had no interest in the property," meaning the negroes. Why then did Andrew Erwin, in his letter to Gen. Mitchell, by Colonel Morgan, bind the firm of Erwin, *Groce,* & Co. to any amount, without limit, which Colonel Morgan might choose to draw for, in his negotiations with regard to negroes?

Will it be said, when he wrote that letter he was ignorant of the fact that Mr. Groce was not interested? But we are told that there were two firms, Erwin, Groce, & Co. at Augusta, in which Mr. Groce *was* interested; and Erwin & Co. *at Savannah,* in which Mr. Groce was not interested; and Andrew Erwin does not profess to have been ignorant when he wrote the letter that the funds had been advanced by Erwin & Co. at Savannah, in which Mr. Groce was not interested. By what right, then, did he use the name of *Groce* in that letter? The circumstance is calculated to infuse a strong suspicion that the witness knows more on this subject than he has

thought proper to disclose. His guilt or innocence, however, is not the question, except so far as it may affect his credit as a witness. His primary object, and what may be called the business of his affidavit, is to exculpate himself from any charge of being involved in this business; and, in this point of view, it is unfortunate for Mr. Erwin, that, in a case so deeply affecting his character, he has not preserved the letter from *a Mr. Thomas*, who now resides near Milledgeville, then, *perhaps near the agency*, from whom he received his first intelligence on this subject, nor any copy of his letter in reply, and that the original answer, also, has been lost by Mr. Thomas.

The only facts material to Gen. Mitchell, which this witness states, are, 1st. The fact that the whole purchase money for the negroes was advanced by Erwin & Co. and, consequently, that Gen. Mitchell is innocent of having made any pecuniary contribution to the purchase.

2d. The circumstances which he states to impugn the credit of Loving, to which I have already adverted.

With respect to the first, however, he admits that for one half of the advance, individual notes were placed in the hands of his son; these notes were *anonymously* mentioned; why they are so, is not explained; there may be some motive of mercantile delicacy in the case, but without mentioning names it would have been easy to have said that no note in which General Mitchell's name appeared, was among them, and, in a case like this, it would have been better to have done so, even if the caution had been over abundant.

James Erwin's affidavit, No. 3. This witness supports the statements of Bowen, as to the partnership with Stantenbry & Thorn; as to the information which carried Bowen to Amelia Island; as to the fact that all the funds were furnished by Erwin & Co. He gives also his letters of instruction to Bowen, the first sentence of which is, "*Buy all and every thing you are sure of making money on.*" He supports Bowen in the assertion that the funds sent were vested in negroes, and, *before the sale was closed, he was consulted by the vendor as to the authority of Bowen to draw on him for the amount. That he assured the vendor Bowen's bill would be good. And, from the impossibility of communicating even by express with General Mitchell, &c. as well as from Bowen's private, confidential, and positive communications,* he is confident that General Mitchell had no knowledge of *the purchase and introduction of those negroes.*

Joseph Thorn's affidavit, No. 4. In strict accordance with James Erwin, he also is of opinion, for the reasons he gives, that it is impossible General Mitchell could have had any knowledge or interest whatsoever *in the purchase or introduction* of those negroes into the United States.

Colonel G. Morgan's affidavit, No. 5. The effect of this evidence has been, as to all substantial points, before stated. This witness states that "*from the best information he could get at the agency,*" with what he had been told by James Erwin and his father, James Erwin's advancing money to Bowen, as well as from a knowledge of their situ-

ation at that time, it is his opinion, decidedly, that General Mitchell had no interest, directly or indirectly, in the *purchase, ownership, and introduction of those African negroes.*"

John S. Thomas' affidavit, No. 6. He supports all the statements of Bowen, Andrew Erwin, and General Mitchell, which could be supposed to fall within the sphere of his observation, and gives it as his decided conviction that General Mitchell not only had no interest or concern in *the purchase or introduction of the negroes*, but was entirely ignorant of *both*. He then states the advice which General Mitchell had given him, to have nothing to do with the purchase of Africans, &c. " for those who did would not only experience pecuniary loss, but destroy their reputation." Sound advice, which proves that General Mitchell was aware of the illegality and disrepute of such proceedings.

This John S. Thomas is the Captain Thomas who belonged to General Mitchell's family at the agency. The deposition opens with saying " Being called upon by the Governor of Georgia, by authority, as he states, from the Secretary of State, &c.; importing that the evidence has been given in the presence, and under the superintendence, of the Governor. This appears not to have been the fact. It is certified by H. Allen, who signs himself J. J. C. that, on the 6th of March, 1820, having been called upon by one of the Secretaries of the Executive Department of Georgia, to attend at the Executive Chamber in the State House, for the purpose of taking some depositions, John Sherwood Thomas was called, and, appearing, refused to be qualified, or to give evidence in regard to his knowledge of the participation of the Indian agent, D. B. Mitchell, in the illicit introduction of Africans into the United States, as he said, " *on account of some communication or writing made by himself to one of the parties which he wished first to secure.*"

It is here proper to give General Mitchell's view of the subject of Captain Thomas' reluctance to give evidence in the case. It is in these words: " The Governor, I understand, has resorted to various expedients to justify his conduct to Captain Thomas; and, among the rest, has obstinately charged him with refusing to give his testimony. But, if Captain Thomas would *condescend* to make a statement of the facts as they really occurred, it would cover the Governor with shame and confusion, if he is capable of feeling either the one or the other. *But Captain Thomas is diffident and unassuming*, and the Governor, presuming upon that, and an intimacy of long standing between himself and the family of Captain Thomas, he thought he could manage the Captain as he pleased, by dictating to him the testimony he should give. His first effort was to draw from the Captain a declaration that he knew nothing about my transactions with the Africans; but finding that he was not to be surprised into an assertion of a falsehood, he then changed his tone, *and endeavored to dragoon him into his measures.* The integrity of Captain Thomas, however, baffled all the arts of his Excellency, and he then thought it necessary to throw a shade over his testimony."

I have before had occasion, sir, to call your attention to the ex-

treme inconveniencies under which strangers to the witnesses must labor in deciding any question of fact, depending on their characters. How impossible would it be, to infer this *diffidence and want of assumption* in the character of Captain Thomas, from the following statement:

"EXECUTIVE OFFICE, GEORGIA,

"*Milledgeville*, 3d *April*, 1820.

"We, whose names are hereunto annexed, do hereby certify, that on this day, about 3 o'clock, P. M. Captain John S. Thomas entered the Executive office, and inquired from his Excellency Governor Clarke, if he had understood him (Thomas) to have said, when summoned to testify to the Executive office, sometime since, [pointing back to the time mentioned by Mr. Allen,] that he declined to give evidence, *then*, from having some paper, or document of some kind, in the hands of General Mitchell? The Governor replied, that he (Thomas) *had* declined, alleging that "he had a paper in the hands of one of the parties, which he wished first to withdraw, as it might injure him," and that the Governor understood from his (Captain Thomas') expression, that the paper spoken of was in the hands of Mitchell. Thomas then rejoined, that he did not think the Governor was right; that he thought he had been mistaken; that he did not state, or intend it to be understood, that it was in *Mitchell's hands;* but in the hands *of one of the parties interested;* some conversation then ensued, and the Governor then mentioned, that he, Thomas, had promised again to call at a particular day and give his evidence, and had failed to do it. This was *rudely* denied by Thomas, and re-asserted by the Governor; and, on *Thomas' assuming an insolent tone and manner*, the Governor inquired, if he had come to the office with an intention to insult him; and, if that was his intention, he, the Governor, wished him to retire. After *some further insolent deportment*, he said, he (Thomas) *would retire*, and on doing so, exclaimed, in a loud and menacing tone, "*By the eternal God, I will have satisfaction out of you one day or other.*"

"In witness whereof, we have hereunto set our signatures.

"DANIEL HUGHES,

"WM. F. STEELE."

Wm. S. Mitchell. Affidavit No. 7. This witness declares his conviction of the innocence of the agent; and I hope he is sincere. It is the evidence of a son in relation to his father. The document will be before you; and I forbear further comment.

James Moss. Affidavit No. 8. Was at the agency at the time of the arrival of the Africans; had frequent conversations with Bowen, Long, and Captain Mitchell, and from none of them was induced to believe that General Mitchell was, in any way, engaged in the *purchase or introduction of the negroes into the state.* He impugns the credit of John Lambert, a witness on the other side, because he had spoken, ignorantly, from hearsay; and because Lambert told him

there were things put into his affidavit that he did not consent to have put in it, &c.

John Binion. Affidavit No. 9. He was a captain of cavalry on the Flint river, stationed at the agency, in January, 1818. Observing the Africans at the agency, he asked General Mitchell if they were for sale? to which he replied, that they were not, *for he had put his thumb upon them;* meaning thereby, as he explained, that the agent had taken them into his possession, *and reported them to the government;* and that, consequently, he would permit no sale of them.

Colonel Brearly. Affidavit No. 10. This witness is neutral; he knows that the Africans were at the agency; but he *knows* nothing of General Mitchell's guilt or innocence.

M'Queen M'Intosh. No. 11. This purports to be an original letter from Mr. M'Intosh; to whom addressed does not appear. At the foot of it is this statement: "This letter, and the extract from M'Intosh's report, which I have quoted, were sent to me by a friend.

"D. B. M."

The letter expresses M'Intosh's opinion, that he was entitled to one-half of the negroes seized. The motives of M'Intosh in making the seizure, are foreign to the question of the agent's guilt.

John Oliphant. Affidavit No. 12. This is the same witness whose evidence has been exhibited in support of the charge. This affidavit is subsequent to the former; and the witness here complains that the magistrates, on the former occasion, would not insert that he had denied the explanation of the red strings, *from the negroes, &c.*

Thomas Rodney. Affidavit No. 13. The witness was employed about the agency. About the day before Gen. Mitchell's departure to spend Christmas with his family (the Christmas of 1817,) Gen. Mitchell called the witness and directed that, during his absence, the witness should have an eye upon the Africans; *that they had been brought in contrary to law; and that witness must not suffer any one to touch the negroes during his absence, for that he meant to report them to the government, and they must remain for further orders, &c.*

Let this testimony, offered by Gen. Mitchell, be compared with his letter to the Secretary of the Treasury, written a few days afterwards, to wit, on Christmas day.

George Sterison. Affidavit No. 14. This witness charges William Moore with an attempt to suborn him as a witness to a bill of sale from Tobler, &c.

James Thompson. Affidavit No. 15. To the same effect. This man is said by Governor Clarke to be a discharged convict from the Pennsylvania penitentiary; and this to the knowledge of General Mitchell, when he took his testimony; which I do not understand the General as denying.

Timothy Barnard. Affidavit No. 16. The witness accuses Wm. Moore of forging an order for money, in his name; and states, that Moore and Mr. Humphreys (a justice of peace of the state of Georgia,) had endeavored to prevail upon him to swear to the contrary; and he believed would forge an affidavit in his name to that effect.

The counter affidavit, with the statement of Mr. Humphreys, will be found among the papers furnished by Gov. Clarke, and by him numbered 17.

Wm. S. Mitchell. Affidavit No. 17. } I have already given the
Imlay Vanscriver. Affidavit No. 18. } effect of these papers. Their tendency is to show, that Moore could not have found in Gen. Mitchell's desk, the two letters from Bowen, of which he professes to have furnished copies.

Lodowick Ashley. Affidavit No. 19. Immaterial. A copy of a deposition in an admiralty proceeding, concerning these negroes, in the name of Miguel De Castre, against ninety-four African negroes. The proceeding must have been fictitious. The affidavit is not substantially variant from that formerly presented from the same witness.

I have thus endeavored to extract from this vast mass of communications and documents, all the facts which appear to me to be material. In the laborious operation, however, of examining upwards of seventy separate documents, and some of them very long, and then comparing them together throughout, and of connecting and combining the circumstances, dissevered and scattered, as they are, through such a dark and extensive wilderness, some important circumstances may have escaped me; and I may have thought some important, which you may deem inconsiderable. It will be of some assistance to you, however, to have had the case broken, even in this imperfect manner; and any errors, that I may have committed, will be easily corrected, in your own examination of it.

You must, I take it for granted, have been struck with the force of the three letters alleged to have been written by Bowen to Gen. Mitchell: (that from Drummond's Bluff, and the two from Milledgeville.) It will be proper, therefore, to examine the ground on which the probability or improbability of those documents rests, and the answers that have been given to them by the parties interested.

1. *Letter from Drummond's Bluff.*

On the 2d November, 1819, when Bowen made his acknowledgment to Governor Clarke, that he had written this letter, no solution of it, favorable to the innocence of General Mitchell, occurred to him; for if it had, the solicitude which he has uniformly discovered to defend General Mitchell, even, at his own expense, can leave no doubt that he would have suggested it.

On the 4th November, 1819, when he published his hand-bill, he says "The letter wrote at Drummond's Bluff was written by me: I wrote it, *without the consent or knowledge of General Mitchell*," but still *no reason for writing it* is mentioned. As this hand bill was intended for the express purpose of vindicating General Mitchell, this was the time, and this the occasion, that he should have given an explanation *of the purpose*, consistent with General Mitchell's innocence, if he could. Bowen is, obviously, a shrewd and acute

man, and he knew that the world would not be satisfied with being told, that he wrote that letter, without the knowledge or consent of General Mitchell; this was saying nothing, for it was never pretended that General Mitchell was at Drummond's Bluff on the 25th December, 1817, to know or consent to the writing of that letter; nor was it at all material to the question of a guilty connection between Bowen and Mitchell, that General Mitchell should have consented, by anticipation, to the writing of such a letter, or that the arrangement which occasioned it (to wit, the sending on the last parcel by Tobler) should have been made, and provided for, before Bowen left the agency. When Bowen, therefore, was stating, in his hand-bill, that he wrote that letter without General Mitchell's knowledge or consent, he could not but know, that the next question, which would occur at once to every inquiring mind, would be, "Why, then, did you write it?" And this question it was material for him to have answered in this hand bill, at least, if any satisfactory answer was at hand Such an omission, on such an occasion, justifies the conclusion, that he had no answer at hand, but that one was yet to be sought for.

On the 5th day of June, 1820, when he gave his deposition, he could think of no better solution of this difficulty, than "that it was *purely to secure the passage of the property, should it meet difficulty.*" To this, it is answered, and with a force which I confess I cannot resist, that the letter is not at all adapted to that purpose; it is, as you will perceive on referring to it, an open avowal, that the negroes were smuggled in from Amelia Island, and states Bowen's apprehensions that they would be seized, before they could be carried through to the agency. Suppose Tobler and his party to have been stopped, under a suspicion that the Africans had been smuggled in, would the production of that letter, which confessed the very fact of smuggling, have removed the suspicion? Is it not manifest, that its production, instead of insuring protection, would have insured the seizure of the whole party? Had Bowen been devising a letter for the purpose he mentions, he has sense enough to have devised a very different one from this. There is, in this letter, a minuteness of confidential details, a friendly familiarity of speculation and advice, exactly adapted to the supposed relation between Bowen and Mitchell, but totally unadapted, and most flagrantly hostile, to the purpose avowed.

Besides, Tobler was furnished with a bill of sale for the negroes to himself: for what was this intended? Surely *to protect them*, in his own right, if he should meet with difficulty. Thus he was doubly armed: the only misfortune being, that the one weapon was at direct war with the other, and that they reciprocally destroyed the effect of both; for, while the bill of sale affirmed the negroes to be Tobler's, the letter shewed them to be Bowen's.

Bowen further affirms, that he never intended this letter to be delivered to General Mitchell, and that he so directed the bearer. "Why, then, did he write it?" The purpose he assigns is incredible: and no other is suggested.

I have no doubt that the letter was intended to be delivered to General Mitchell, because I can conceive no other rational purpose for which such a letter, attending to all its parts, could have been written. "I go to Milledgeville by Savannah, *and wish you to keep the negroes employed until I can come out to the agency.* I have directed *Tobler to take charge of the horses and packs, &c. and to put the horses out in the cane swamp, and attend to them.*" Was this request not intended to reach General Mitchell? Why, then, was it inserted? It was not necessary to the purpose of protection, unless, indeed, we could be so credulous as to suppose, that by arguing a familiarity and understanding with General Mitchell, it would act as a protection. It was from white men, however, and citizens of the United States, that interruption was expected; it was from men too, as their letter shows, whose suspicions were already broad awake, as to the violation of our slave laws, that were going on in that quarter of the union, and who were determined to suppress it; with such men, a letter couched in these terms, had it been written by General Mitchell himself, instead of Bowen, would have afforded no protection, but, on the contrary, would have insured a seizure.

It appears to me impossible for credulity itself to scan the terms of this letter, and to doubt that it was written, and sent with the intention of being delivered, to General Mitchell; for, it seems to me that there is no other conceivable purpose, within the scope of human invention, for which it could have been written. On the moment we reach this conclusion, there is only one further question: Would Bowen, or any other man in his senses, have sent such a letter to General Mitchell, without any apology, or the semblance of apology, for so doing; but, on the contrary, with the air of easy and familiar friendship and confidence, unless authorized to do so by the footing on which he knew himself to stand with that gentleman, without a perfect understanding with him before hand? And, if this question must, from the nature of things, be answered in the negative, the inquiry is at an end; the fact of a guilty understanding and connection between Bowen and the agent is established.

It is true this letter did not reach its place of destination. It was not delivered to General Mitchell, because both the letter and bill of sale were lost by Tobler, lost, I presume, before he had an opportunity of delivering the letter; I presume so, because, as it is clear to my understanding, that the letter could have been written for no other purpose than to be delivered, I can conceive no reason why it should not have been delivered, if an opportunity had occurred of doing so. That those papers were lost before such opportunity occurred, is rendered highly probable, by the following circumstances. Bowen's affidavit is calculated to give the impression, that after parting with Tobler and the negroes, at Drummond's Bluff, he had never seen them again until after their arrival at the agency; that the negroes arrived before him, and that he found them there on his arrival. It is true he does not say this explicitly; such, however, is the fair inference

from his narrative. But he does say, explicitly, that his inquiries of Tobler for the letter, were made after the negroes had arrived at the agency. Now it is important to observe, that John Oliphant, the witness, states that, after landing the negroes in Camden county, about six miles below camp Pinkney, they proceeded about sixteen miles on Blackshear's road, "where Mr. Bowen left us about midnight, and did not join us again *until we got in a few days travel of the agency.*" In confirmation of this statement, General Mitchell, in his communication to the Secretary of War, implies, and Captain Mitchell in his affidavit expressly states, that Bowen did arrive *with* the second parcel of negroes.

Now, if Bowen was so desirous that the letter from Drummond's Bluff should not be seen by the agent, would it not have been natural for him to have demanded it immediately upon his joining the party, *within a few days travel of the agency?* Nay, if it *had* been intended to *be delivered to the agent*, yet, inasmuch as the necessity of its delivery had been superseded by Bowen's personal presence, and more particularly as the letter was full of danger both to himself and General Mitchell, can it be believed that he would not have demanded and destroyed it immediately on re-joining the party? Can it be believed that he would have travelled for several days, with the party towards the agency, leaving to Tobler, an Indian, addicted, it seems, to habits of intoxication, the custody of a paper which it was no longer necessary to preserve, while every moment of its existence was big with danger both to his friend and himself? And if, with all these means of prevention, he *did* permit Tobler to continue in possession of that letter, nay, to carry it to the agency, can it be believed that he felt all the solicitude he professes, to keep this letter from the knowledge of the agent? To me the only natural and probable course seems to be that, whether the letter was originally intended for General Mitchell's eye or not, Bowen should have demanded the letter immediately on rejoining the party, a few days journey from the agency; I believe that if he deemed it necessary to demand it all, he must have demanded it there, and that he *there* received the answer that it was lost, and consequently that no opportunity ever was afforded of delivering the letter; hence, the weight which General Mitchell attaches to its non-delivery is destroyed, and the solution of this difficult problem which Bowen has labored to extract from the hypothesis that Tobler had arrived before him, and had not delivered the letter, according to his order not to deliver it, is dissipated. Indeed, if the letter had been lost after the arrival at the agency, and among the usual haunts of the Indians and white people at that place, it is difficult to conceive how Mr. Bowen could have regained his composure and satisfaction at such a discovery, on the supposition that it would never be found; such a supposition, and such an effect from it, would be natural enough, if the letter had been lost in the wilderness, before he had joined the party, and several days journey from the agency; but they are both extremely unnatural and improbable, in relation to the loss of such a document happening at the agency,

among the dwellings of the people, where there was every probability and almost certainty, that it would be found. Finally, if this paper was lost at the agency, after the continued opportunity which Bowen had had, for several days, of preventing such an accident, I repeat it, that he must give up all pretensions *to any concern*, from its meeting the eye of the agent.

You will observe that Moore does not profess to have been, himself, the finder of this letter. He received it, together with Tobler's bill of sale, from an Indian woman, by the name of Mary. When, and where, Mary found it, from whom she received it, we are not informed. Moore's impression is, that it *was* lost by Tobler, *at the agency*. Be it so; of one thing we are certain—that Bowen wrote the letter; and there is no rational doubt that it was originally written with the intention of being delivered to Gen. Mitchell. We are certain of another thing, that, if the letter reached the agency in the charge of Tobler, it was because Bowen felt no solicitude about its fate.

The letters of the 7th and 23d March, from Milledgeville, are next to be considered. Notwithstanding the strong negative proof furnished by Gen. Mitchell, these letters carry with them an internal proof of their own genuineness, which, when compared with the acknowledged letter from Drummond's Bluff, with the other circumstances in the case, and with Gen. Mitchell's whole conduct, throughout, it is very difficult to resist. And when, to these violent presumptions, we add Bowen's abrupt evasions of Gov. Clarke's interrogatories on this subject, (so much like the cowardly flinching of a guilty conscience, and so utterly unlike the intrepid openness of conscious innocence,) I confess that I have little doubt that the letters were written by Bowen. Gov. Clarke's remarks on these letters are well worthy your attention.

The results of this examination are,

First. That there is no proof that General Mitchell made any pecuniary advance for the purchase of these negroes.

Second. That there is no proof that he had any personal agency in the purchase or introduction of them.

Third. That there is no proof that he had any knowledge of this specific purchase and introduction, until the negroes arrived at the agency.

Fourth. But that there is presumptive proof that there was a *previous general understanding*, at least, between Bowen and him, on which Bowen founded his whole plan of operations in regard to those negroes.

These circumstances are,

First. The conversations imputed to General Mitchell by the witnesses Loving and Woodward, and the conversation of Groce with Breithaupt, as explained by subsequent acts.

Second. The connexion of General Mitchell with Bowen in the distribution of the $10,000 worth of goods at Fort Hawkins, in July, 1817, mentioned by Captain Melvin, and the fact in this *very month* (*when* too General Mitchell acknowleges that he had seen him,)

Bowen set out on the expedition, which terminated in the purchase of the negroes.

Third. The fact of his taking the negroes to the agency.

Fourth. His reception there, which was just such as the conversations related by Loving and Woodward, and that related by Breithaupt as being held by him with Groce, made it natural to expect: for Bowen, so far from being molested for what he had done, is permitted to return to Amelia Island, and repeat the offence.

Fifth. General Mitchell's whole conduct in the affair, which is in strict consonance with those conversations, and with the hypothesis of such a previous understanding with Bowen.

But let it be admitted *that there was no such previous understanding*, and that General Mitchell not only had no concern, of any kind, *in the purchase and introduction of those negroes*, but that he was *wholly ignorant of their purchase and introduction until their arrival at the agency;* yet,

Fifth. His conduct, *after their arrival at the agency*, is, in my opinion, utterly inconsistent with the supposition of his innocence.

General Mitchell admits, in his letter of the 25th December, 1817, that he was fully apprized of the solicitude of this government to suppress the African slave trade: and, if his witness, Thomas, is to be believed, he was also perfectly aware both of the danger and disrepute of having any thing to do with such a business. He must, in the nature of things, have been perfectly apprized of the odium which was attached to it, not only in Georgia, but in every other part of the Union, among respectable men.

Thus informed, let us inquire how it would have been natural for a man of common intelligence, and of ordinary pride of character, to have acted, when, on the 8th Dec. 1817, he discovered that Bowen had dared to intrude himself into the agency, with half a hundred of smuggled African negroes; a measure so directly and inevitably calculated to throw upon the agent public suspicion and infamy? Would not his indignation have been excited to the highest pitch, at such an act of audacity; and must he not have seen that nothing could save him from the consequence of such a step, but the most prompt and rigorous measures of resistance? Would he not *instantaneously* have seized the culprit and given him up to the laws of his country? Would he not have immediately given up the negroes to the Governor of the state within whose constitutional limits and jurisdiction the agency was established? And would he not, forthwith, have forwarded a *full and fair* report *of the whole case* to the government, whose officer he was? Such, it seems to me, would certainly have been the course of any man, even of common intelligence and prudence, so circumstanced, and *this for his own sake*, putting aside every incentive of patriotism; for such a course would have repelled every suspicion which the presumption of Bowen was calculated to throw upon him, and have placed his purity beyond the reach of question.

How different was the course pursued by Gen. Mitchell! Intelli

gent, proud of character, and energetic, as he seems to be, instead of arresting Bowen, he permits him to return to Amelia Island, and repeat the offence by bringing another cargo of Africans to the agency. Instead of handing over the negroes to the executive of the state, he makes no communication of facts whatever, so far as the proofs speak, to that executive, until after the seizure by McIntosh; and, to his own government, (whom he was bound, by his duty, to keep correctly informed,) he writes only the letters of the 25th December, 1817, and 3d February, 1818, both of which are calculated to mislead the government as to the true state of the case, for both keep out of view the double importation by Bowen; both represent the negroes as being all gone; from neither could the government infer that there was any case, actually pending at the agency, on which their counsel was asked, for both letters treat the case as if finally disposed of; nor was there any disclosure of the important fact that nearly one half of the negroes were yet at the agency, until the explosion produced by M'cIntosh rendered longer concealment impossible, and robbed the subsequent disclosure, on the part of the agent, of all pretensions to merit.

But, what is worse, while the government was thus kept in the dark, Gen. Mitchell, under color of an obsolete law of Georgia, wholly inapplicable to the case, and which, if it had been in full force and vigor, and also applicable, he well knew gave *him* no power to act, gives up to Groce one half of these Africans, with a passport which authorized him to carry them to the place for which he knew, as appears by his communications, that they had been originally purchased; thus lending the authority of his office to aid in the consummation of a conscious breach of the laws.

The other half are detained at the agency. Why? Because, says Mitchell, he was waiting the orders of the government, when he had reported no case calling for any orders; because, says Bowen, it was necessary for him (Bowen) to go back to Georgia and get other security to bond this parcel too. Between them, however, there the negroes remained until they were seized by McQueen McIntosh.

That Gen. Mitchell should suffer the agency under his command to be made a place of rendezvous for smuggled African negroes; that he should make the government no fair report of the case; that he should co-operate with the violaters of the law in the execution of their purpose, and *that* under so flimsy a pretext as the law of Georgia of 1796; that he should reduce himself to the degrading necessity of obtaining from the culprit, whom he ought, in the first instance, to have seized and dragged to punishment, *a certificate that he, Mitchell, had no concern in the affair*, as Bowen states he did; and that he should do all this without reward, and from an innocent mistake of the law, would certainly be a very charitable conclusion; but, as it would, also, in my opinion, be a very irrational one, especially in regard to a man of Gen. Mitchell's superior understanding, I am constrained to adopt the conclusion (painful as it is,) *that General*

Mitchell is guilty of having prostituted his power, as agent for Indian affairs at the Creek agency, to the purpose of aiding and assisting in a conscious breach of the act of Congress of 1807, *in prohibition of the slave trade, and* THIS *from mercenary motives.*

I have the honor to remain, Sir,

Most respectfully,

Your obedient servant,

WM. WIRT.

The PRESIDENT *of the United States.*

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